

CHAPTER 40

PUBLIC EMPLOYEE TRUST FUND

	SUBCHAPTER I		
	TRUST PURPOSES AND ADMINISTRATION		
40.01	Creation and purpose.	40.52	Health care benefits.
40.015	Compliance with federal tax laws.	40.53	Pharmacy benefits purchasing pool.
40.02	Definitions.	40.55	Long-term care coverage.
40.03	Powers and duties.		SUBCHAPTER V
40.04	Accounts and reserves.		DISABILITY BENEFITS
40.05	Employee retirement contributions.	40.61	Income continuation coverage.
40.06	Reports and payments.	40.62	Income continuation insurance benefits.
40.07	Records.	40.63	Disability annuities.
40.08	Benefit assignments and corrections.	40.65	Duty disability and death benefits; protective occupation participants.
40.19	Rights preserved.		SUBCHAPTER VI
	SUBCHAPTER II		SURVIVOR BENEFITS
	WISCONSIN RETIREMENT SYSTEM	40.70	Life insurance coverage.
40.20	Creation.	40.71	Death benefit eligibility.
40.21	Participating employers.	40.72	Life insurance benefits.
40.22	Participating employees.	40.73	Death benefits.
40.23	Retirement annuities.	40.74	Beneficiaries.
40.24	Annuity options.		SUBCHAPTER VII
40.25	Lump sum payments.		DEFERRED COMPENSATION PLANS
40.26	Reentry into service.	40.80	State deferred compensation plan.
40.27	Post-retirement adjustments.	40.81	Deferred compensation plan authorization.
40.28	Variable benefits.	40.82	General provisions.
40.285	Purchase of creditable service.		SUBCHAPTER VIII
40.29	Temporary disability; creditable service.		EMPLOYEE-FUNDED REIMBURSEMENT ACCOUNTS
40.30	Intrastate retirement reciprocity.	40.85	Employee-funded reimbursement account plan.
40.31	Maximum benefit limitations.	40.86	Covered expenses.
40.32	Limitations on contributions.	40.87	Treatment of compensation.
	SUBCHAPTER III	40.875	Administrative and contract costs.
	SOCIAL SECURITY FOR PUBLIC EMPLOYEES		SUBCHAPTER IX
40.40	State-federal agreement.		HEALTH INSURANCE PREMIUM CREDITS
40.41	Coverage.	40.95	Health insurance premium credits.
	SUBCHAPTER IV		SUBCHAPTER X
	HEALTH AND LONG-TERM CARE BENEFITS		PRIVATE EMPLOYER HEALTH CARE COVERAGE
40.51	Health care coverage.	40.98	Health care coverage.

SUBCHAPTER I

TRUST PURPOSES AND ADMINISTRATION

40.01 Creation and purpose. (1) CREATION. A “public employee trust fund” is created to aid public employees in protecting themselves and their beneficiaries against the financial hardships of old age, disability, death, illness and accident, thereby promoting economy and efficiency in public service by facilitating the attraction and retention of competent employees, by enhancing employee morale, by providing for the orderly and humane departure from service of employees no longer able to perform their duties effectively, by establishing equitable benefit standards throughout public employment, by achieving administrative expense savings and by facilitating transfer of personnel between public employers.

(2) PURPOSE. The public employee trust fund is a public trust and shall be managed, administered, invested and otherwise dealt with solely for the purpose of ensuring the fulfillment at the lowest possible cost of the benefit commitments to participants, as set forth in this chapter, and shall not be used for any other purpose. Revenues collected for and balances in the accounts of a specific benefit plan shall be used only for the purposes of that benefit plan, including amounts allocated under s. 20.515 (1) (um) or (ut) or 40.04 (2), and shall not be used for the purposes of any other benefit plan. Each member of the employee trust funds board shall be a trustee of the fund and the fund shall be administered by the department of employee trust funds. All statutes relating to the fund shall be construed liberally in furtherance of the purposes set forth in this section.

(3) COMPATIBILITY OF TRUSTEE RESPONSIBILITIES. Membership on the employee trust funds board, group insurance board, deferred compensation board, Wisconsin retirement board and the teachers retirement board shall not be incompatible with any other public office. The board members and the employees of the department shall not be deemed to have a conflict of interest in carrying out their responsibilities and duties in administering this chapter, or taking other appropriate actions necessary to achieve the purposes of this chapter, solely by reason of their being eligible for benefits under the benefit plans provided under this chapter. However, any board member or employee of the department is expressly prohibited from participating in decisions directly related to a specific benefit, credit, claim or application of the person and from participating in negotiations or decisions on the selection of actuarial, medical, legal, insurance or other independent contractors if the board member or employee of the department has a direct or indirect financial interest in or is an officer or employee or is otherwise associated with the independent contractor.

History: 1981 c. 96; 1989 a. 31; 1991 a. 269.

Monies appropriated to the Public Employee Trust Fund are not “state funds”; therefore the legislature may not restrict the use of those funds by a statute governing the use of “state or local funds.” OAG 1–95.

40.015 Compliance with federal tax laws. (1) The Wisconsin retirement system is established as a governmental plan and as a qualified plan for federal income tax purposes under the internal revenue code and shall be so maintained and administered.

(2) No benefit plan authorized under this chapter may be administered in a manner which violates an internal revenue code

provision that authorizes or regulates that benefit plan or which would cause an otherwise tax exempt benefit to become taxable under the internal revenue code.

History: 1995 a. 302.

40.02 Definitions. In this chapter, unless the context requires otherwise:

(1) “Accumulation” means the total employee required contributions or employer required contributions or additional contributions as increased or decreased by application of investment earnings.

(2) “Additional contribution” means any contribution made by or on behalf of a participant to the retirement system other than employee and employer required contributions.

(2m) “Alternate payee” means a former spouse of a participant who is named in a qualified domestic relations order as having a right to receive a portion of the benefits of the participant.

(3) “Annual earnings period” means the calendar year except as follows:

(a) For a teacher, it means the period beginning on the first day of a school year and ending on the day prior to the beginning of the next school year, as determined by the employer in accordance with rules of the department.

(b) For a supreme court justice, court of appeals judge or circuit judge who terminates all creditable service on or after May 1, 1992, it means the period beginning on July 1 and ending on the following June 30. This paragraph applies to periods beginning after June 30, 1988.

(c) For an educational support personnel employee who terminates participating employment on or after July 1, 1997, it means the period beginning on July 1 and ending on the following June 30. This paragraph applies to periods beginning after June 30, 1997.

(d) For a technical college educational support personnel employee who terminates participating employment on or after July 1, 1998, it means the period beginning on July 1 and ending on the following June 30. This paragraph applies to periods beginning after June 30, 1998.

(e) For a cooperative educational service agency support personnel employee who terminates participating employment on or after July 1, 1998, it means the period beginning on July 1 and ending on the following June 30. This paragraph applies to periods beginning after June 30, 1998.

(4) “Annuitant” means a person receiving a retirement annuity, beneficiary annuity or a disability annuity from the Wisconsin retirement system, including a person whose disability annuity has been suspended. For group life insurance purposes, “annuitant” also means annuitants of retirement systems other than the Wisconsin retirement system as determined by the group insurance board for any employer.

(5) “Annuity” means a series of monthly payments payable during the life of the annuitant or during a specific period. The first installment of each annuity from the Wisconsin retirement system shall be payable on the first day of the calendar month following the annuity effective date as specified in this chapter and shall be the full monthly amount or, if less, the full monthly amount multiplied by a percentage equal to 3.6% times the number of days from the effective date of the annuity to the end of the month in which the annuity is effective, counting both the effective date and the last day of the month. Succeeding installments shall be payable as of the first day of each succeeding calendar month. The last payment shall be the payment payable in the calendar month in which the annuitant dies, except as otherwise specifically provided in this chapter. In the case of the death of an annuitant prior to the expiration of any guaranteed number of payments, if the first installment was less than the full monthly amount, an additional payment shall be paid to the beneficiary, in the month after the end of the guarantee period, equal to the then

monthly amount payable times the difference between 100% and the percent applied in determining the first monthly installment.

(6) “Assumed benefit rate” means a rate of 5%. The assumed benefit rate shall be used for calculating reserve transfers at the time of retirement, making actuarial valuations of annuities in force, determining the amount of lump-sum death benefits payable from the portion of an annuity based on additional deposits and crediting interest to employee required contribution accumulations under s. 40.04 (4) (a) 2.

(7) “Assumed rate” means the probable average effective rate expected to be earned for the core annuity division on a long-term basis. The assumed rate shall be a rate of 8 percent and the actuarial assumption for across-the-board salary increases for the purpose of valuing the liabilities of the Wisconsin Retirement System shall be 3.4 percent less than the assumed rate unless due to changed economic circumstances the actuary recommends and the board approves a different rate. The assumed rate for a calendar year shall be used for all calculations of required contributions and reserves for participants, except as provided in s. 40.04 (4) (a) 2., 2g., and 2m., and the amount of any lump sum benefit paid instead of an annuity, except it shall not be used for any purpose for which the assumed benefit rate is to be used under sub. (6).

(8) (a) “Beneficiary” means:

1. The person, or a trust in which the person has a beneficial interest, so designated by a participant or insured employee or annuitant in the last written designation of beneficiary on file with, and in the form approved by, the department at the time of death, except as provided in s. 40.23 (4) (c). A written designation of beneficiary for a specified benefit plan applies only for determining beneficiaries under that specified benefit plan.

2. In the absence of a written designation of beneficiary, or if all beneficiaries so designated die before filing with the department an application for any death benefit payable, the person determined in the following sequence: group 1, widow or widower; group 2, children if at least one child survives the participant, employee or annuitant, in which event the share of any deceased child shall be payable to the surviving spouse of the child or to the surviving children of the child if there is no spouse, or otherwise to the other eligible children in this group; group 3, grandchild; group 4, parent; group 5, brother and sister. No payment may be made to a person included in any group if there is a living person in any preceding group.

3. The estate of the participant, employee or annuitant, if there is no written designation of beneficiary and no beneficiary determined under subd. 2. or par. (b) or if so specified in the last written designation of beneficiary filed prior to time of death.

(b) “Beneficiary” does not include a person who dies before filing with the department either a beneficiary designation applicable to that death benefit or an application for any death benefit payable to the person except as otherwise provided under group 2, under par. (a) 2. If a person dies after filing a beneficiary application but before the date on which the benefit check, share draft or other draft is issued or funds are otherwise transferred, any benefit payable shall be paid in accord with the written designation of beneficiary, if any, filed with the department in connection with the application or, if none, in accord with the last designation previously filed by the person, or otherwise to the person’s estate.

(9) “Beneficiary annuity” means any death benefit which is paid as an annuity.

(10) “Benefit plan” includes the Wisconsin retirement system, employee-funded reimbursement account plan, deferred compensation plan, OASDHI, group health insurance, group income continuation insurance, group life insurance or any other insurance plan established under this chapter, regardless of whether each type of insurance is provided through one or multiple contracts or provides different levels of benefits to different employees.

(11) “Board” means the employee trust funds board.

(12) “Child” means natural children and legally adopted children.

(12m) “Cooperative educational service agency support personnel employee” means a person who is a cooperative educational service agency employee, but who is not a teacher.

(12r) “Core annuity” means any annuity other than a variable annuity.

(13) “Coverage group” has the meaning given that term by federal regulations.

(14) “Creditable current service” means the creditable service granted for service performed for a participating employer and for which a participating employee receives earnings after the effective date of participation for that employer.

(15) (a) “Creditable military service” means active service in the U.S. armed forces, based on the total period of service in the U.S. armed forces, provided:

1. The participant enlisted or was ordered or inducted into active service in the U.S. armed forces;
2. The participant left the employment of a participating employer to enter the U.S. armed forces;
3. The participant returns to the employment of the employer whose employment the participant left to enter the U.S. armed forces within 180 days of release or discharge from the armed forces, or within 180 days of release from hospitalization because of injury or sickness resulting from service in the armed forces;
4. The period of service in the U.S. armed forces is not more than 4 years, unless involuntarily extended for a longer period;
5. The participant was discharged from the U.S. armed forces under conditions other than dishonorable;
6. The participant upon return from service in the U.S. armed forces furnishes evidence required to establish the participant’s rights under this chapter; and
7. The service in the U.S. maritime service, including the merchant marine, was aboard an oceangoing vessel during the period beginning on December 7, 1941, and ending on August 15, 1945, and the participant submits to the department a copy of a release or discharge certificate or honorable service certificate issued by the U.S. department of defense that verifies the applicant’s creditable maritime service.

(b) The creditable military service under par. (a) shall be the same type, as set forth in s. 40.23 (2m) (e), as the participant was receiving prior to entry into the U.S. armed forces.

(c) Notwithstanding sub. (17) (intro.) and any other law, any person who is credited with 5, 10, 15 or 20 or more years of creditable service, not counting any previously granted creditable military service, may receive creditable military service at the time of retirement for not more than 1, 2, 3 or 4 years, respectively, of active service which meets the standards under par. (a) 5., provided:

1. This paragraph applies only to active military service served prior to January 1, 1974.
2. Any creditable military service otherwise granted shall be included in determining the maximum years to be granted under this paragraph.
3. Creditable military service under this paragraph shall be allocated at the time of retirement in proportion to the amount of the participant’s creditable service for each of the types of creditable service set forth in s. 40.23 (2m) (e) on the date the participant attains 5, 10, 15 or 20 years of creditable service.

4. This paragraph does not apply to any active service used for the purpose of establishing entitlement to, or the amount of, any benefit, other than a disability benefit, to be paid by any federal retirement program except OASDHI and the retired pay for nonregular military service program under 10 USC 1331 to 1337 or, if the participant makes an election under s. 40.30 (2), by any retirement system specified in s. 40.30 (2) other than the Wisconsin retirement system.

5. The participant’s creditable service terminates on or after January 1, 1982.

(16) “Creditable prior service” means all previous service for a participating employer of a person who became a participating employee on the effective date of participation for that employer if the service or employment conformed to the requirements for granting creditable current service, but no credit shall be granted for any period of service which was previously covered by a retirement system.

(17) “Creditable service” means the creditable current and prior service, expressed in years and fractions of a year to the nearest one-hundredth, for which a participating employee receives or is considered to receive earnings under sub. (22) (e) or (em) and for which contributions have been made as required by s. 40.05 (1) and (2) and creditable military service, service credited under s. 40.285 (2) (b) and service credited under s. 40.29, expressed in years and fractions of years to the nearest one-hundredth. How much service in any annual earnings period is the full-time equivalent of one year of creditable service shall be determined by rule by the department and the rules may provide for differing equivalents for different types of employment. Except as provided under s. 40.285 (2) (e) and (f), the amount of creditable service for periods prior to January 1, 1982, shall be the amount for which the participant was eligible under the applicable laws and rules in effect prior to January 1, 1982. No more than one year of creditable service shall be granted for any annual earnings period. Creditable service is determined in the following manner for the following persons:

(a) Each person holding the offices of governor, lieutenant governor, secretary of state, state treasurer, representative to the assembly, senator, chief clerk and sergeant at arms of the assembly and chief clerk and sergeant at arms of the senate shall receive creditable service on a full-time basis for the period during which the office is held.

(d) 1. Notwithstanding s. 40.19 (3), upon application to the department each participant who has been a protective occupation participant after July 1, 1969, if the participant has been employed as a protective occupation participant for the 12 months immediately preceding retirement, shall be granted creditable service as a protective occupation participant for all service prior to July 1, 1969, which was performed in a position designated under sub. (48) as a position in which an individual would be a protective occupation participant.

2. Any benefits authorized under subd. 1. for any person who terminated as a participating employee prior to April 27, 1982, which are in excess of the amounts otherwise payable to the person under other provisions of this chapter, shall be paid from the appropriation under s. 20.515 (1) (a).

(f) Notwithstanding any other law or rule, any participating employee whose service includes Wisconsin teaching service performed before July 1, 1966, for which required contributions were made under the applicable statutes and rules of the former state teachers retirement system and for which the number of days of teaching service in a fiscal year was fewer than 120, shall receive creditable service for that service in an amount equal to the total number of teaching days credited during the fiscal year divided by 165 days.

(gm) Any assistant district attorney in a county having a population of 500,000 or more who did not have vested benefit rights under the retirement system established under chapter 201, laws of 1937, who became a participating employee on January 1, 1990, and who is a participating employee on October 29, 1999, shall receive creditable service for the total period of his or her service under the retirement system established under chapter 201, laws of 1937.

(h) Notwithstanding par. (d), each participant who is a state motor vehicle inspector hired before January 1, 1968, shall be granted creditable service as a protective occupation participant for all covered service as a state motor vehicle inspector that was

earned before, on or after May 1, 1990. Notwithstanding par. (d), each participant who is a state motor vehicle inspector hired on or after January 1, 1968, shall be granted creditable service as a protective occupation participant for all covered service as a state motor vehicle inspector that was earned on or after May 1, 1990, but may not be granted creditable service as a protective occupation participant for any covered service as a state motor vehicle inspector that was earned before May 1, 1990.

(m) Notwithstanding par. (d), each participant who is a state probation and parole officer on or after January 1, 1999, shall be granted creditable service as a protective occupation participant for all covered service as a state probation and parole officer that was earned on or after January 1, 1999, but may not be granted creditable service as a protective occupation participant for any covered service as a state probation and parole officer that was earned before January 1, 1999, unless that service was earned while the participant was classified under sub. (48) (a) and s. 40.06 (1) (d) as a protective occupation participant.

(18) "Death benefit" means any amount payable to a beneficiary under s. 40.73.

(18f) "Decree date" means the first day of the month in which a participant's marriage is terminated by a court under a final judgment, decree or order.

(18g) "Deferred compensation plan" means a plan which is in accordance with section 457 of the internal revenue code, under which an employer executes an agreement by which an employee voluntarily agrees to defer a part of gross compensation for payment at a later date. Deferred compensation plan does not include annuity plans specified under section 403 (b) of the internal revenue code.

(18s) "Deferred compensation plan provider" means a person who provides administrative or investment services related to deferred compensation plans.

(19) "Department" means the department of employee trust funds.

(20) "Dependent" means the spouse, minor child, including stepchildren of the current marriage dependent on the employee for support and maintenance, or child of any age, including stepchildren of the current marriage, if handicapped to an extent requiring continued dependence. For group insurance purposes only, the department may promulgate rules with a different definition of "dependent" than the one otherwise provided in this subsection for each group insurance plan.

(21) "Disability annuity" means any annuity payable under s. 66.191, 1981 stats., or s. 40.63.

(22) "Earnings":

(a) Except as provided in pars. (b) to (f) and s. 40.63 (1) (c), means the gross amount paid to an employee by a participating employer as salary or wages, including amounts provided through deferred compensation or tax shelter agreements, for personal services rendered to or for an employer, or which would have been available for payment to the employee except for the employee's election that part or all of the amount be used for other purposes and also includes the money value, as determined by the employer, of any board, lodging, fuel, laundry and other allowances provided for the employee in lieu of money. For purposes of this paragraph, the gross amount shall be determined prior to deductions for taxes, insurance premiums, retirement contributions or deposits, charitable contributions or similar amounts and shall be considered received as of the date when the earnings would normally be payable by the employer. For reporting and computation purposes, fractions of a dollar shall be disregarded in determining annual earnings.

(b) Does not mean payments made for reasons other than for personal services rendered to or for an employer, including, but not limited to:

1. Uniforms purchased directly by the employer.
2. Employer contributions for insurance and retirement.

3. Unemployment insurance benefits.

4. Payments contingent on the employee providing the employer with or assisting the employer in acquiring tangible or intangible property of the employee.

5. Payments contingent on the employee having attained an age which, if increased by 5 years, is greater than what the employee's age would be on the employee's normal retirement date.

6. Lump sum payments at termination for accumulated vacation, sick leave or compensatory time, except that for disability purposes any lump sum payments shall be treated as a continuation of the employee's earnings and service at the employee's then current rate of pay. This subdivision does not exclude payments which are broadly applicable to the employees of the employer regardless of age, length of service or likelihood of employment termination.

7. Payments contingent on the employee having terminated covered employment or having died.

8. Payments contingent on the employee terminating employment at a specified time in the future including payments to secure voluntary release of an unexpired contract of employment.

9. Payments for damages, attorney fees, interest or penalties paid under court judgment or by compromise settlement to satisfy a grievance or wage claim even though the amount of damages or penalties might be based on previous salary levels. However, the department may by rule provide that a payment of additional wages to a continuously participating employee, or the payment of salary to a participant for any period of improper termination of participating employment, is earnings, if the payment is treated by the employer and employee as taxable income and is consistent with previous payment for hours of service rendered by the employee.

10. Payments made in the last 5 years of employment which are the result of a change in the method of computing the base compensation of an employee, unless the change in method for computing the base compensation is a permanent change and is broadly applicable to the employees of that employer or unless the change is the result of a significant change in the nature of the duties and activities expected of the employee.

11. Payment in lieu of fringe benefits normally paid for or provided by the employer but which can be paid to the employee at the employee's option.

12. For any employer, earnings paid to an employee directly by any other unit of government except county supplements to judges under s. 20.923 (3m), 1977 stats., s. 753.016, 1977 stats., s. 753.071, 1977 stats., and s. 753.075, 1977 stats., are earnings if the supplemental payments were subject to subch. 1 of ch. 41, 1977 stats.

14. Any other type of payment determined by the department by rule to be a distortion of the normal progression patterns on which an individual's benefits should be based.

(c) For OASDHI purposes, has the meaning specified for wages under federal regulations.

(d) 1. For Wisconsin retirement system purposes only, for a state elected official who is prohibited by law from receiving an increase in compensation during the official's term of office, means the compensation which would have been payable to the participant if the participant had not been prohibited by law from receiving an increase in compensation during his or her term of office.

2. For Wisconsin retirement system purposes only, for a state senator, means the compensation which would have been payable to the participant if the participant had not been prohibited by law from receiving an increase in compensation during part of his or her term of office.

(e) Except for OASDHI purposes, means compensation deemed to have been paid for services deemed to have been rendered while serving in a position covered under, and meeting the

requirements of, [38 USC 4301](#), et seq., at the employee's rate of pay prior to beginning such service, provided contributions and premiums on the deemed earnings are paid as required under s. [40.05](#).

(em) For Wisconsin retirement system purposes only, for a member of the faculty, as defined in s. [36.05 \(8\)](#), of a university who is on sabbatical leave under s. [36.11 \(17\)](#), means the compensation that would have been payable to the participant, at the participant's rate of pay immediately prior to beginning the sabbatical leave, for service that would have been rendered at the university during the period of the sabbatical leave if the participant had continued to render services for the participant's employer during that period. Contributions and premiums on earnings considered to be received under this paragraph shall be paid as required under s. [40.05](#).

(f) Does not mean credits for payment of health insurance premiums converted from accumulated unused sick leave for a participating employee who qualifies for a disability benefit under s. [40.63](#) or [40.65](#), and who qualifies for the conversion of accumulated unused sick leave under s. [40.05 \(4\) \(b\)](#), [\(bc\)](#) or [\(bf\)](#) or as provided by a participating employer's compensation plan or contract.

(g) Does not include credits for the payment of health insurance premiums provided under s. [40.05 \(4\) \(bw\)](#) or subch. [IX](#) or any sabbatical or vacation leave converted into such credits.

(22m) "Educational support personnel employee" means a person who is a school district employee, but who is not a teacher.

(23) "Effective rate" means:

(a) For the core annuity division, the rate, disregarding fractions of less than one-tenth of one percent, determined by dividing the remaining core annuity division investment earnings for the calendar year or part of the calendar year, after making provision for any necessary reserves and after deducting prorated interest and the administrative costs of the core annuity division for the year, by the core annuity division balance at the beginning of the calendar year as adjusted for benefit payments and refunds paid during the year excluding prorated interest.

(b) For the variable annuity division, the rate, disregarding fractions less than one percent, which will distribute the net gain or loss of the variable annuity division to the respective variable annuity balances and reserves using the same procedure as provided in par. (a) for the core annuity division.

(24) "Elected official", except as otherwise provided in sub. [\(48\)](#), means a participating employee who is:

(a) A supreme court justice, court of appeals judge, circuit judge or state, county or municipal official elected by vote of the people.

(b) Appointed as provided by statute to fill a vacancy in a position specified in par. (a).

(c) The chief clerk and sergeant at arms of the senate and assembly.

(25) "Eligible employee" means:

(a) For the purpose of any group insurance:

1. Any participating state employee who has been participating under the Wisconsin retirement system for a period of at least 6 months prior to attainment of age 70 not including any period of leave of absence without pay.

2. Any state employee who is a member or employee of the legislature, a state constitutional officer, a district attorney who did not elect under s. [978.12 \(6\)](#) to continue insurance coverage with a county, or who did elect such coverage but has terminated that election under s. [978.12 \(6\)](#), a justice of the supreme court, a court of appeals judge, a circuit judge or the chief clerk or sergeant at arms of the senate or assembly.

3. The blind employees of the Wisconsin workshop for the blind authorized under s. [47.03 \(1\) \(b\)](#), 1989 stats., or of the nonprofit corporation with which the department of workforce development contracts under s. [47.03 \(1m\) \(a\)](#), 1989 stats., as of the

beginning of the calendar month following completion of 1,000 hours of service. Persons employed by an employer who are blind when hired shall not be eligible for life insurance premium waiver because of any disability that is directly or indirectly attributed to blindness and may convert life insurance coverage only once under the contract.

4. Only a person who has not attained age 70 at the time of becoming initially eligible for the group insurance coverage provided under this chapter; but this subdivision does not exclude any participant from participation in the group health insurance plan nor does it exclude from participation in the group life insurance plan any employee who is initially eligible on the employer's effective date of participation.

5. Any state employee who has been participating under the Wisconsin retirement system for a period of at least 6 months prior to attaining age 70 not including any period of leave of absence without pay and who is on union service leave except the cost for premium payments shall be entirely the responsibility of the state employee on union service leave.

6. Any state employee of the office of district attorney, other than the district attorney, in a county having a population of 500,000 or more who did not elect under s. [978.12 \(6\)](#) to continue insurance coverage with that county, or who did elect such coverage but has terminated that election under s. [978.12 \(6\)](#), and who has participated under the retirement system established under [chapter 201, laws of 1937](#), and under the Wisconsin retirement system for a combined and consecutive period, of at least 6 months prior to attainment of age 70, not including any period of leave of absence without pay.

(b) For the purpose of group health insurance coverage:

1. Any teacher who is employed by the university for an expected duration of not less than 6 months on at least a one-third full-time employment basis and who is not described in subd. [1m](#).

1m. Any teacher who is a participating employee and who is employed by the university for an expected duration of not less than 6 months on at least a one-third full-time employment basis.

2. Any person employed as a graduate assistant and other employees-in-training as are designated by the board of regents of the university, who are employed on at least a one-third full-time basis.

2g. Any person employed as a graduate assistant and other employees-in-training as are designated by the board of directors of the University of Wisconsin Hospitals and Clinics Authority, who are employed on at least a one-third full-time basis with an expected duration of employment of at least 6 months.

3. The surviving spouse of an employee, or of a retired employee, who is currently covered by health insurance at the time of death of the employee or retired employee. The spouse shall have the same right to health insurance coverage as the deceased employee or retired employee, but without state contribution, under rules promulgated by the secretary.

4. Any insured employee who is retired on an immediate or disability annuity, or who receives a lump sum payment under s. [40.25 \(1\)](#) that would have been an immediate annuity if paid as an annuity, if the employee meets all of the requirements for an immediate annuity including filing of application whether or not final administrative action has been taken.

5. Any participating state employee under the Wisconsin retirement system, notwithstanding par. (a) [1](#).

6. A participating state employee who terminates creditable service:

a. After attaining 20 years of creditable service; and

b. Who is eligible for an immediate annuity but defers application.

6e. A state employee who terminates creditable service after attaining 20 years of creditable service, remains a participant, and is not eligible for an immediate annuity.

6g. Any state constitutional officer, member or officer of the legislature, head of a state department or state agency who is appointed by the governor with senate confirmation, or head of a legislative service agency, as defined in s. 13.90 (1m) (a), who terminates all creditable service on or after January 1, 1992, who is eligible for and has applied for a retirement annuity or a lump sum payment under s. 40.25 (1), who, if eligible, is receiving medicare coverage under both part A and part B of Title XVIII of the federal social security act, 42 USC 1395 to 1395zz, and who has acted under s. 40.51 (10m) to elect group health insurance coverage.

6m. Beginning on the date specified by the department, but not earlier than March 20, 1992, and not later than July 1, 1992, any of the following persons who, if eligible, is receiving medicare coverage under both part A and part B of Title XVIII of the federal social security act, 42 USC 1395 to 1395zz, and who has acted under s. 40.51 (16) to elect group health insurance coverage:

a. A retired employee of the state who is receiving a retirement annuity or has received a lump sum payment under s. 40.25 (1).

b. An employee of the state who terminates creditable service after attaining 20 years of creditable service, remains a participant and is not eligible for an immediate annuity.

6r. Any insured employee of the state who terminates creditable service on or after April 23, 1992, after attaining at least 20 years of creditable service, remains a participant and is not eligible for an immediate annuity or is not receiving a retirement or disability annuity, and who, if eligible, is receiving medicare coverage under both part A and part B of Title XVIII of the federal social security act, 42 USC 1395 to 1395zz.

7. Any employee whose health insurance premiums are being paid under s. 40.05 (4) (bm).

8. Any other state employee for whom coverage is authorized under a collective bargaining agreement pursuant to subch. I or V of ch. 111 or under s. 230.12 or 233.10.

9. Except as provided under s. 40.51 (7), any other employee of any employer, other than the state, that has acted under s. 40.51 to make such coverage available to its employees.

10. Any participating employee who is an employee of this state and who qualifies for a disability benefit under s. 40.63 or 40.65.

11. Beginning on July 1, 1988, any retired public employee, other than a retired employee of the state, who is receiving an annuity under the Wisconsin retirement system, or any dependent of such an employee, as provided in the health insurance contract, who is receiving a continuation of the employee's annuity, and, if eligible, is receiving medicare coverage under both part A and part B of Title XVIII of the federal social security act, 42 USC 1395 to 1395zz, and who has acted under s. 40.51 (10) to elect group health insurance coverage.

(bm) For the purpose of long-term care insurance, in addition to any state annuitant under s. 40.02 (54m), any employee of the state who received a salary or wages in the previous calendar year, and any participant who was at one time employed by the state who receives a lump sum payment under s. 40.25 (1) which would have been an immediate annuity if paid as an annuity, if the employee is a resident of this state and meets all of the requirements for an immediate annuity including filing of an application, whether or not final administrative action has been taken.

(c) For the purpose of group life insurance coverage, for participating employees and employees subject to s. 40.19 (4) of any employer, other than the state, which has acted under s. 40.70 (1) (a) to make group life insurance available to its employees the same as provided under par. (a) 1. and 3.

(d) For the purpose of income continuation insurance coverage, and except as provided under s. 40.61 (3), for participating employees of any employer under sub. (28), other than the state, which has acted under s. 40.61 to make such coverage available to its employees.

(26) "Employee" means any person who receives earnings as payment for personal services rendered for the benefit of any employer including officers of the employer, except as provided in subch. X. An employee is deemed to have separated from the service of an employer at the end of the day on which the employee last performed services for the employer, or, if later, the day on which the employee-employer relationship is terminated because of the expiration or termination of leave without pay, sick leave, vacation or other leave of absence. A person shall not be considered an employee if a person:

NOTE: Sub. (26) (intro.) is amended eff. 1–1–10 by 1999 Wis. Act 9 to read:

(26) "Employee" means any person who receives earnings as payment for personal services rendered for the benefit of any employer including officers of the employer. An employee is deemed to have separated from the service of an employer at the end of the day on which the employee last performed services for the employer, or, if later, the day on which the employee-employer relationship is terminated because of the expiration or termination of leave without pay, sick leave, vacation or other leave of absence. A person shall not be considered an employee if a person:

(a) Is employed under a contract involving the furnishing of more than personal services.

(b) Is customarily engaged in an independently established trade, business or profession providing the same type of services to private individuals and organizations as is provided to the employer and whose services to a participating employer are not compensated for on a payroll of that employer, except that persons holding offices provided for by statute shall be considered employees.

(c) Is a patient or inmate of a hospital, home or institution and performs services in the hospital, home or institution.

(26g) "Employee-funded reimbursement account plan" means any of the following:

(a) A plan in accordance with section 125 of the Internal Revenue Code under which an employee may direct an employer to place part of the employee's gross compensation in an account to pay for certain future expenses of the employee under section 125 of the Internal Revenue Code.

(b) A plan in accordance with section 132 of the Internal Revenue Code under which an employee may direct an employer to place part of the employee's gross compensation in an account to pay for certain future expenses of the employee under section 132 of the Internal Revenue Code.

(26r) "Employee-funded reimbursement account plan provider" means a person who provides administrative services related to employee-funded reimbursement account plans.

(27) "Employee required contribution" means the contribution made by an employee under s. 40.05 (1) (a) 1. to 4. or for an employee under s. 40.05 (1) (b).

(28) "Employer" means the state, including each state agency, any county, city, village, town, school district, other governmental unit or instrumentality of 2 or more units of government now existing or hereafter created within the state, any federated public library system established under s. 43.19 whose territory lies within a single county with a population of 500,000 or more, a local exposition district created under subch. II of ch. 229 and a family care district created under s. 46.2895, except as provided under ss. 40.51 (7) and 40.61 (3) and subch. X. "Employer" does not include a local cultural arts district created under subch. V of ch. 229. Each employer shall be a separate legal jurisdiction for OASDHI purposes.

NOTE: Sub. (28) is amended eff. 1–1–10 by 1999 Wis. Act 65 to read:

40.02 (28) "Employer" means the state, including each state agency, any county, city, village, town, school district, other governmental unit or instrumentality of 2 or more units of government now existing or hereafter created within the state, any federated public library system established under s. 43.19 whose territory lies within a single county with a population of 500,000 or more, a local exposition district created under subch. II of ch. 229 and a family care district created under s. 46.2895, except as provided under ss. 40.51 (7) and 40.61 (3). "Employer" does not include a local cultural arts district created under subch. V of ch. 229. Each employer shall be a separate legal jurisdiction for OASDHI purposes.

(29) “Employer required contribution” means the contribution made by an employer under s. 40.05 (2) (a) to (f).

(30) “Executive participating employee” means a participating employee in a position designated under s. 19.42 (10) (L) or 20.923 (4), (4g), (7), (8), or (9) or authorized under s. 230.08 (2) (e) during the time of employment. All service credited prior to May 17, 1988, as executive service as defined under s. 40.02 (31), 1985 stats., shall continue to be treated as executive service as defined under s. 40.02 (31), 1985 stats., but no other service rendered prior to May 17, 1988, may be changed to executive service as defined under s. 40.02 (31), 1985 stats.

(32) “Federal regulations” means the provisions of section 218 of Title II of the federal social security act and applicable regulations adopted under the federal social security act.

(33) “Final average earnings” means:

(a) The monthly rate of earnings, ignoring any fractions of a dollar, obtained by dividing:

1. The participant’s total earnings received or considered to be received under sub. (22) (e) or (em) and for which contributions are made under s. 40.05 (1) and (2) during the 3 annual earnings periods (excluding any period more than 3 years prior to the effective date for any participating employer) in which the earnings were the highest, subject to the annual compensation limits under 26 USC 401 (a) (17) for a participating employee who first becomes a participating employee on or after January 1, 1996; by

2. Twelve times the total amount of creditable service for the 3 periods.

(b) 1. For a state elected official who is prohibited by law from receiving an increase in compensation during the official’s term of office and who so elects, one-twelfth of the annual salary, subject to the annual compensation limits under 26 USC 401 (a) (17) for a participating employee who first becomes a participating employee on or after January 1, 1996, which would have been payable to the participant during the last completed month in which the participant was a participating employee in such a position if the participant had not been prohibited by law from receiving an increase in salary during his or her term of office, but only with respect to service as a state elected official.

2. For a state senator who so elects, one-twelfth of the annual salary which would have been payable to the participant during the last completed month in which the participant was a participating employee in such a position if the participant had not been prohibited by law from receiving an increase in salary during part of his or her term of office, but only with respect to service as a state senator.

(c) For a participant who makes an election under s. 40.30 (2), the monthly rate of earnings applicable under par. (a) or (b), increased as provided under s. 40.30 (4) (b) but subject to the annual compensation limits under 26 USC 401 (a) (17) for a participating employee who first becomes a participating employee on or after January 1, 1996.

(35) “Fund” means the public employee trust fund.

(36) “Governing body” means the legislature or the head of each state agency with respect to employees of that agency for the state, the common council in cities, the village board in villages, the town board in towns, the county board in counties, the school board in school districts, or the board, commission or other governing body having the final authority for any other unit of government, for any agency or instrumentality of 2 or more units of government, for any federated public library system established under s. 43.19 whose territory lies within a single county with a population of 500,000 or more, for a local exposition district created under subch. II of ch. 229 or for a family care district created under s. 46.2895, but does not include a local cultural arts district created under subch. V of ch. 229.

(37) “Health insurance” means contractual arrangements which may include, but are not limited to, indemnity or service benefits, or prepaid comprehensive health care plans, which will provide full or partial payment of the financial expense incurred

by employees and dependents as the result of injury, illness or preventive medical procedures. The plans may include hospitalization, surgical and medical care, as well as ancillary items or services as determined by the group insurance board. The plans may include the type of coverage normally referred to as “major medical” insurance.

(38) “Immediate annuity” means an annuity, not including an annuity from additional contributions, which begins to accrue not later than 30 days after termination of employment.

(39) “Insured employee” means, for purposes of each insurance benefit plan, any eligible employee who is properly enrolled in the benefit plan.

(39m) “Internal revenue code” means the internal revenue code, as defined for the current taxable year under s. 71.01 (6), and applicable regulations adopted under the internal revenue code, including temporary regulations.

(39r) “Joint and survivor annuity” means an optional annuity form, described under s. 40.24 (1) (d) or a rule promulgated under s. 40.24 (1) (g), that is payable for the life of the participant and, after the death of the participant, a continuing percentage of which is payable in monthly installments to the named survivor.

(40) “Leave of absence” means any period during which an employee has ceased to render services for a participating employer and receive earnings and there has been no formal termination of the employer–employee relationship. For purposes of the fund every leave of absence, except a military leave or union service leave, shall terminate 3 years after it begins or, if earlier, upon the date specified by the employer in a notification to the department that the employer–employee relationship has terminated. A leave of absence is not deemed ended or interrupted by reason of resumption of active duty until the employee has resumed active performance of duty for 30 consecutive calendar days for at least 50% of what is considered that employee’s normal work time with that employer. For the purpose of group health insurance coverage, every leave of absence due to employee lay-off which has not been terminated before 3 years have elapsed shall continue for affected insured employees until an additional 2 years elapse or until sick leave credits used to pay health insurance premiums are exhausted, whichever occurs first.

(40m) “Long-term care insurance” means insurance that primarily provides coverage for care that is provided in institutional and community-based settings and that is convalescent or custodial care or care for a chronic condition or terminal illness. The term does not include a medicare supplement policy, as defined in s. 600.03 (28r), a medicare replacement policy, as defined in s. 600.03 (28p), or a continuing care contract, as defined in s. 647.01 (2).

(41) “Milwaukee teacher” means any teacher employed by the board of school directors of the city of Milwaukee.

(41m) “Monthly salary” means the gross amount paid to a participant making a claim under s. 40.65, at the time he or she becomes disabled within the meaning of s. 40.65 (4), by the employer in whose employ the injury occurred or the disease was contracted. Overtime pay may not be considered part of an employee’s monthly salary unless the employee received it on a regular and dependable basis.

(41r) “Named survivor” means the natural person designated by a participant on an application for a joint and survivor annuity or pursuant to a request under s. 40.24 (4) to receive, after the death of the participant, a continuing percentage of the annuity payable in monthly installments. A participant may not designate more than one natural person as the named survivor for a joint and survivor annuity. A participant’s designation of a named survivor on an application for a joint and survivor annuity is irrevocable after the deadline specified under s. 40.24 (4). Pursuant to rules promulgated by the department, a named survivor may designate one or more beneficiaries to receive any remaining guaranteed monthly installments that are unpaid at the time of the named survivor’s death.

(42) “Normal retirement date” means:

(a) The date on which a participant attains the age of 55 years for a protective occupation participant who terminates covered employment before July 1, 1990, or, for a protective occupation participant who terminates covered employment on or after July 1, 1990, the date on which the participant attains the age of 54 years if the participant has accumulated less than 25 years of creditable service or the age of 53 years if the participant has accumulated at least 25 years of creditable service, except as provided in par. (g).

(b) The date on which a participant attains the age of 62 years for an elected official or an executive participating employee, except as provided in par. (g).

(d) The date on which a participant attains the age of 65 years for any participant not subject to par. (a) or (b), except as provided in par. (g).

(g) The date applicable to the participant under pars. (a) to (d) at the earlier of either the date it is necessary to make any determination or to take any action relative to the participant for purposes of the retirement system or the date of termination of employment of the participant, notwithstanding the fact that a participant may have been in one or more different employment categories at any previous time except for the purpose of calculating an annuity. For the purpose of calculating an annuity, the normal retirement date for each category provided by pars. (a) to (d) applies to service which is subject to that category. For the purpose of calculating a retirement benefit for an executive participating employee qualifying only under s. 40.02 (30) (b), 1985 stats., a normal retirement date of the date the executive participating employee attains the age of 62 years shall be applied to creditable service of the executive participating employee for which par. (d) would otherwise apply except the number of creditable service years to which that normal retirement date shall be applied under this paragraph may not exceed the number of executive service years of the executive participating employee.

(43) “OASDHI” means federal old-age, survivors, disability and health insurance under Titles II and XVIII of the federal social security act.

(44) “OASDHI benefit” means the primary or disability insurance monthly benefit amount for which a person is eligible, or for which a participant will be eligible upon attaining the lowest age at which old-age benefits are payable under the OASDHI program.

(45) “Participant” means any person included within the provisions of the Wisconsin retirement system by virtue of being or having been a participating employee whose account has not been closed under s. 40.25 (1) or (2).

(46) “Participating employee” means an employee who is currently in the service of, or an employee who is on a leave of absence from, a participating employer under the Wisconsin retirement system and who has met the requirements for inclusion within the provisions of the Wisconsin retirement system under s. 40.22.

(47) “Participating employer” means, for purposes of each of the respective benefit plans, any employer subject to the provisions of that plan under this chapter.

(48) (a) “Protective occupation participant” means any participant whose principal duties are determined by the participating employer, or, subject to s. 40.06 (1) (dm), by the department head in the case of a state employee, to involve active law enforcement or active fire suppression or prevention, provided the duties require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning.

(am) “Protective occupation participant” includes any participant whose name is certified to the fund as provided in s. 40.06 (1) (d) and (dm) and who is any of the following:

1. A conservation warden.
2. A conservation patrol boat captain.

3. A conservation patrol boat engineer.
4. A conservation pilot.
5. A conservation patrol officer.
6. A forest fire control assistant.
7. A member of the state traffic patrol.
8. A state motor vehicle inspector.
9. A police officer.
10. A fire fighter.
11. A sheriff.
12. An undersheriff.
13. A deputy sheriff.
14. A state probation and parole officer.
15. A county traffic police officer.
16. A state forest ranger.
17. A fire watcher employed at Wisconsin veterans facilities.
18. A state correctional–psychiatric officer.
19. An excise tax investigator employed by the department of revenue.
20. A special criminal investigation agent in the department of justice.
21. An assistant or deputy fire marshal.
22. A person employed under s. 61.66 (1).

(b) Each determination of the status of a participant under this subsection shall include consideration, where applicable, of the following factors:

1. A “police officer” is any officer, including the chief, or employee of a police department, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist or mechanic and whose functions do not clearly fall within the scope of active law enforcement even though such an employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement. Police officer includes any person regularly employed and qualifying as a patrol officer or a person of equal or higher rank, even if temporarily assigned to other duties.

2. A “fire fighter” is any officer, including the chief, or employee of a fire department, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist or mechanic and whose functions do not clearly fall within the scope of active fire suppression or prevention even though such an employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active fire suppression or prevention. Fire fighter includes any person regularly employed and qualifying as a fire fighter, hose handler or a person of equal or higher rank, even if temporarily assigned to other duties.

3. A “deputy sheriff” or a “county traffic police officer” is any officer or employee of a sheriff’s office or county traffic department, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist or mechanic and whose functions do not clearly fall within the scope of active law enforcement even though such an employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement. Deputy sheriff or county traffic police officer includes any person regularly employed and qualifying as a deputy sheriff or county traffic police officer, even if temporarily assigned to other duties.

4. A “member of the state traffic patrol” includes one division administrator in the department of transportation who is counted under s. 230.08 (2) (e) 12. and whose duties include supervising the state traffic patrol, if the division administrator is certified by the law enforcement standards board under s. 165.85 (4) (b) 1. as being qualified to be a law enforcement officer.

(bm) “Protective occupation participant” includes any participant who is an emergency medical technician if the participant’s employer classifies the participant as a protective occupation participant and the department receives notification of the partici-

part's name as provided in s. 40.06 (1) (d) and (dm). Notwithstanding par. (a), an employer may classify a participant who is an emergency medical technician as a protective occupation participant without making a determination that the principal duties of the participant involve active law enforcement or active fire suppression or prevention. A determination under this paragraph may not be appealed under s. 40.06 (1) (e) or (em), but a determination under this paragraph regarding the classification of a state employee is subject to review under s. 40.06 (1) (dm). Notwithstanding sub. (17) (d), each participant who is classified as a protective occupation participant under this paragraph on or after January 1, 1991, shall be granted creditable service as a protective occupation participant for all covered service as an emergency medical technician that was earned on or after the date on which the department receives notification of the participant's name as provided in s. 40.06 (1) (d) and (dm), but may not be granted creditable service as a protective occupation participant for any covered service as an emergency medical technician that was earned before that date.

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

(48m) "Qualified domestic relations order" means a judgment, decree or order issued by a court pursuant to a domestic relations law of any state or territory of the United States, that meets all of the following criteria:

(a) The name, date of birth, social security number and last-known mailing address of the participant and the alternate payee are specified.

(b) The Wisconsin retirement system is specified by name.

(c) The decree date is specified as the date to be used for valuing and dividing the participant's account.

(d) The alternate payee share is specified as a single percentage, not to exceed 50% of the value of the participant's account on the decree date, to be applied to all parts of the participant's account.

(e) The determination of the alternate payee share does not require that benefits be paid to the alternate payee if those benefits are also required to be paid to another alternate payee or to the internal revenue service under a lien placed on the participant's account under 26 USC 64.

(f) The judgment, decree or order requires the participant to certify, in a form prescribed by the department, all of the participant's active military service, as described in sub. (15) (a).

(g) The judgment, decree or order does not require payment of benefits exceeding in value those benefits to which the participant is entitled on the decree date.

(h) The judgment, decree or order does not assign any form of joint ownership of a participant's account or benefits payable from the account.

(i) The judgment, decree or order does not require a division of the participant's account in a manner contrary to s. 40.08 (1m).

(j) The judgment, decree or order requires the participant's employer to submit to the department a report of all earnings, service and contributions of the participant as provided in s. 40.06 (7).

(k) The judgment, decree or order does not require the department to enforce or otherwise monitor the benefits assigned to the alternate payee under s. 40.08 (1m).

(48r) "Required beginning date" means the later of April 1 of the calendar year following the calendar year in which a participant attains the age of 70.5 years or April 1 of the calendar year following the calendar year in which a participating employee retires.

(49) "Retired employee" means a former insured employee who is not a participating employee and who is retired on an immediate or disability annuity or who receives a lump sum payment under s. 40.25 (1) which would have been an immediate annuity if paid as an annuity or who is an eligible employee under sub. (25) (b) 6., 6e., or 6g.

(50) "Retirement annuity" means any annuity payable under s. 40.23, including the continuation of retirement annuities after the death of the participant.

(51) "Retirement system" means a pension, annuity, retirement or similar fund or system established by this state or by a political subdivision of this state.

(52) "Salary index" means the percentage increase in the average of the total wages, as determined under 42 USC 415 (b) (3) (A), between the year before the preceding year and the preceding year.

(53) "Secretary" means the secretary of the department.

(54) "State agency" means any office, department or independent agency in the executive, legislative and judicial branches of state government and includes the following:

(b) The Wisconsin Housing and Economic Development Authority.

(c) The Wisconsin Health and Educational Facilities Authority.

(e) The community development finance authority created under ch. 233, 1985 stats., before July 1, 1988.

(f) The nonprofit corporation with which the department of workforce development contracts under s. 47.03 (1m) (a), 1989 stats.

(g) The World Dairy Center Authority.

(h) The University of Wisconsin Hospitals and Clinics Authority.

(i) The Fox River Navigational System Authority.

(j) The Wisconsin Aerospace Authority.

(54m) "State annuitant" means a person receiving a retirement annuity, beneficiary annuity or a disability annuity from this state's retirement system who at one time received a salary or wages from this state and who is a resident of this state.

(54t) "State employee" means an employee of a state agency.

(55) "Teacher" means any employee engaged in the exercise of any educational function for compensation in the public schools, including charter schools as defined in s. 115.001 (1) that are instrumentalities of a school district, or the university in instructing or controlling pupils or students, or in administering, directing, organizing or supervising any educational activity, but does not include any employee determined to be an auxiliary instructional employee under s. 115.29 (3). "Teacher" includes the following:

(a) Any person employed as a librarian by any school board in a library in any school under its jurisdiction, including a charter school as defined in s. 115.001 (1) that is an instrumentality of a school district, whose qualifications as a librarian are at least equal to the minimum librarian qualifications prescribed by the state superintendent of public instruction.

(b) Any person employed as a full-time social center, community house, adult education or recreation director, instructor or other employee employed by the board of school directors of the city of Milwaukee, who possesses the qualifications required for employment as a teacher.

(55g) “Technical college educational support personnel employee” means a person who is a technical college district employee, but who is not a teacher.

(55m) “Timely appeal” means a written request for the review of a determination that is filed within 90 days after the determination is mailed to the person aggrieved by the determination.

(56) “Union service leave” means that period of absence from employment commencing on the date an employee commences a leave of absence for the purpose of serving in a position with a labor organization representing employees of the employee’s employer, and terminating on the date that leave of absence terminates or the date that service with that labor organization terminates, whichever first occurs.

(57) “University” means the University of Wisconsin System under ch. 36.

(57m) “U.S. armed forces” means any of the following:

- (a) The U.S. army, including the WACS.
- (b) The U.S. navy, including the WAVES.
- (c) The U.S. air force, including the WAFS.
- (d) The U.S. marine corps, including the WMS.
- (e) The U.S. coast guard, including the SPARS.
- (f) The U.S. maritime service, including the merchant marine.

(58) “Variable annuity” means any annuity provided by the accumulations in the variable annuity division established under s. 40.04 (7) providing for the dollar amount of benefits or other contractual payments or values to vary so as to reflect differences which may arise between the total value of the annuity reserve for variable annuities and the reserve that would be required if the annuities were core annuities.

History: 1981 c. 96, 187, 250, 274, 386; 1983 a. 9, 27; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 106, 140; 1983 a. 141 ss. 1 to 3, 20; 1983 a. 191 ss. 1, 6; 1983 a. 192 s. 304; 1983 a. 255 s. 6; 1983 a. 275, 290, 368; 1983 a. 435 s. 7; 1985 a. 29, 225; 1985 a. 332 ss. 52, 251 (1); 1987 a. 27, 62, 83, 107, 309, 340, 356, 363, 372, 399; 1987 a. 403 ss. 43 to 45, 256; 1989 a. 13, 14, 31; 1989 a. 56 s. 259; 1989 a. 166, 182, 189, 218, 230, 240, 323, 327, 336, 355, 357, 359; 1991 a. 32, 39, 113, 152, 229, 269, 315; 1993 a. 16, 263, 383, 490, 491; 1995 a. 27, ss. 1946 to 1953, 9130 (4); 1995 a. 81, 88, 89, 216, 240, 302, 381, 417; 1997 a. 3, 27, 39, 69, 110, 162, 237, 238; 1999 a. 9, 11, 42, 63, 65, 83; 2001 a. 16, 38, 103, 104, 109; 2003 a. 33; 2005 a. 153, 335.

A union request that the county make pension contributions for jailers equal in amount to those for its “protective occupation participants” under sub. (48) did not require reclassification of the jailers as “POPS,” is allowed under s. 40.05 (2) (g) 1., and is a mandatory subject of bargaining under s. 111.70 (1) (a). *County of LaCrosse v. WERC*, 180 Wis. 2d 100, 508 N.W.2d 9 (1993).

“Active military service” and “active service” as used in sub. (15) (c) do not include “active duty for training.” *Morris v. Employee Trust Funds Board*, 203 Wis. 2d 172, 554 N.W.2d 205 (Ct. App. 1996), 94–0857.

It was reasonable to determine jailers’ status based on their duties performed as sheriff’s department employees regardless of their appointment as deputy sheriff. Being a deputy sheriff is a necessary qualification to being a protective occupation participant under sub. (48) (am), but is not a sufficient one. The employee’s name must also be certified to the fund as provided in s. 40.06 (1) (d). *Mattila v. Employee Trust Funds Board*, 2001 WI App 79, 243 Wis. 2d 90, 626 N.W.2d 33, 00–0759.

40.03 Powers and duties. (1) EMPLOYEE TRUST FUNDS BOARD. The board:

(a) Shall authorize and terminate the payment of all annuities and death benefits, except disability annuities, in accordance with this chapter and may adjust the computation of the amount, as provided by this chapter, as necessary to prevent any inequity which might otherwise exist if a participant has a combination of full-time and part-time service, a change in annual earnings period during the high years of earnings or has previously received an annuity which was terminated.

(am) Shall ensure that the Wisconsin retirement system complies with the internal revenue code as a qualified plan for income tax purposes and shall ensure that each benefit plan is administered in a manner consistent with all internal revenue code provisions that authorize and regulate the benefit plan.

(b) Shall approve the tables to be used for computing benefits under the Wisconsin retirement system after certification of the tables in writing by the actuary.

(c) Shall appoint the secretary of the department and may employ or select any medical, legal and other independent contractors as are required for the administration of the fund.

(d) Shall select and retain an actuary or an actuarial firm, under one or more contractual agreements which shall run to the department for the purpose of performing all actuarial services which are necessary for the operation and control of each of the insurance and benefit programs under this chapter. Under this paragraph, the board shall:

1. Determine the requirements for and qualifications of the actuary or the actuarial firms so retained.

2. Determine the terms and conditions of each contractual agreement, and the time any contractual agreement shall be in force.

3. Determine the procedure for the selection of an actuary or an actuarial firm.

4. Direct the secretary to sign on behalf of the department any contractual agreement approved by the board.

(e) Shall approve the contribution rates and actuarial assumptions determined by the actuary under sub. (5) (b) and (c).

(f) May compel witnesses to attend meetings and to testify upon any necessary matter concerning the fund and authorize fees not in excess of the statutory provisions for witnesses.

(g) May determine the length of creditable prior service from information available. Any determination shall be conclusive as to any period of service unless, within the time limits specified in s. 40.08 (10), the board reconsiders any case and changes the determination.

(h) May accept any gift, grant, or bequest of any money or property of any kind, for the purposes designated by the grantor if the purpose is specified as providing cash benefits to some or all of the participants, insured employees, or annuitants of this fund or for reducing employer or employee costs; or, if no purposes are designated, then for the purpose of distribution to the several accounts and reserves of the Wisconsin Retirement System at the end of the year as if the money or property were investment earnings of the core annuity division.

(i) May determine that some or all of the disability annuities and death benefits provided from the Wisconsin retirement system shall instead be provided through group insurance plans to be established by the group insurance board either as separate plans or as integral parts of the group life and income continuation insurance plans established under this chapter.

(j) Shall accept timely appeals from determinations made by the department, other than appeals of determinations made by the department regarding disability annuities. The board shall review the relevant facts and may hold a hearing. Upon completion of its review and hearing, if any, the board shall make a determination which it shall certify to the participating employer or the appropriate state agency and to the appropriate employee, if any. The board’s determination of an employee’s status under s. 40.06 (1) (e) shall remain in effect until receipt by the department of notification indicating a different classification. A participant may appeal that determination as provided by s. 40.06 (1) (e).

(k) May require any employer to distribute to its employees any materials which are determined to be necessary for the efficient administration of the fund.

(L) May delegate powers and duties as deemed necessary or desirable.

(m) Shall approve or reject all administrative rules proposed by the secretary under sub. (2) (i).

(n) May allow any separate retirement system for employees of one or more employers to deliver or send funds representing assets of that system to the department. If the department accepts delivery or transmission, the department shall purchase shares of the core retirement investment trust or variable retirement investment trust or both with those funds, subject to rules under sub. (2) (q). Each retirement system shall pay as provided in s. 40.04 (2) for the costs of investing and administering any of its funds sent or delivered to the department.

(p) May, upon the recommendation of the actuary, transfer in whole or in part the assets and reserves held in any account described in s. 40.04 (9) to a different account described in s. 40.04 (9), for the purpose of providing any group insurance benefit offered by the group insurance board.

(2) SECRETARY. The secretary:

(a) Shall be in charge of the administration of the department and exercise, as head of the department, all powers and duties specified in ss. 15.04 and 15.05.

(b) Shall employ and select administrative, clerical or other employees as required for the administration of this chapter and establish the internal organization of the department.

(c) Shall process all applications for annuities and benefits and may initiate payment based on estimated amounts, when the applicant is determined to be eligible, subject to correction upon final determination of the amount of the annuity or benefit.

(d) May suspend an annuity pending final action by the board, or a disability annuity pending final action by the Wisconsin retirement board or the teachers retirement board, when, in the secretary's judgment, the annuitant is not eligible to receive the annuity.

(e) Shall submit to each employer and, upon request, to each individual participating in any of the benefit plans administered by the department the report required under s. 15.04 (1) (d) or a summary of the report. The report shall be in lieu of any reports required by ss. 15.07 (6) and 15.09 (7) or any other law and shall include financial and actuarial balance sheets which reflect changes in the asset, liability and reserve accounts and additional statistics which the secretary determines to be necessary or desirable for a full understanding of the status of the fund and the benefit plans.

(f) May delegate to other departmental employees any power or duty of the secretary.

(g) Shall submit once each year to each participant currently making contributions, and to any other participant upon request or as in the secretary's judgment is desirable, a statement of the participant's account together with appropriate explanatory material.

(h) May request any information from any participating employee or from any participating employer as is necessary for the proper operation of the fund.

(i) Shall promulgate, with the approval of the board, all rules, except rules promulgated under par. (ig) or (ir), that are required for the efficient administration of the fund or of any of the benefit plans established by this chapter. In addition to being approved by the board, rules promulgated under this paragraph relating to teachers must be approved by the teachers retirement board and rules promulgated under this paragraph relating to participants other than teachers must be approved by the Wisconsin retirement board, except rules promulgated under s. 40.30.

(ig) Shall promulgate, with the approval of the group insurance board, all rules required for the administration of the group health, long-term care, income continuation or life insurance plans established under subchs. IV to VI.

(ir) Shall promulgate, with the approval of the deferred compensation board, all rules required for the administration of deferred compensation plans established under subch. VII.

(it) Shall promulgate, with the approval of the private employer health care coverage board, all rules required for the administration of the private employer health care coverage program established under subch. X.

(j) May authorize any governing body in a written designation filed by the governing body with the department to have an agent or agents to act for the governing body in all matters pertaining to the fund.

(k) May determine an amount, and the procedure for establishing the amount, of OASDHI benefits for any person using any information the department has available in its records and any

assumptions as to data not in the department's records as deemed appropriate for estimating the benefits unless the person establishes, through a certification of the person's social security earnings record or actual benefit amount, a different amount payable. In the case of any participant whose earnings are not subject to Titles II and XVIII of the federal social security act by reason of eligibility for a choice provided by statute, it is conclusively assumed in making the estimate, regardless of the person's actual federal social security earnings record, that 50% of those earnings are and were subject to Titles II and XVIII of the federal social security act. The secretary may require the person to provide the department with a certification of the person's social security earnings record or benefit amount as a condition for receiving benefits under this chapter. If a participant does not receive the OASDHI benefit for which the person is or will be eligible by reason of failure to apply for the benefit or by virtue of the suspension of the benefit the participant will nevertheless be deemed to have received the OASDHI benefit amount for purposes of any benefit computation under this chapter.

(L) Shall determine each calendar year's effective rate.

(m) Shall have all other powers necessary to carry out the purposes and provisions of this chapter, except as otherwise specifically provided by this chapter.

(n) Shall have any additional powers and duties as are delegated by the board.

(p) Shall establish procedures for and conduct the elections of board members required under ss. 15.16 (1) (d) and 15.165 (3) (a) 1., 2., 6. and 7. The procedures shall include the establishment of a nominating process and shall provide for the distribution of ballots to all participating employees and annuitants eligible to vote in the election.

(q) Shall promulgate rules governing the times when separate retirement systems may send or deliver funds under sub. (1) (n) or withdraw those funds, the amounts of money that may be sent, delivered or withdrawn, the valuation of money that has been sent, delivered or withdrawn, and the distribution of investment income among the retirement systems. These rules may modify the accounting and valuation bases and the investment earnings distribution procedures of the Wisconsin retirement system to the extent necessary to achieve equity among the various retirement systems.

(r) Shall promulgate rules governing the times for making lump sum payments that are authorized under this chapter to be made to or from the Wisconsin retirement system and governing the valuation of money that has been sent, delivered or withdrawn, and the distribution of investment income to be credited on those amounts. The rules may modify the accounting and valuation bases and the investment earnings distribution procedures of the Wisconsin retirement system to the extent necessary to achieve equity among the various types of payments and contributions to, and payments from, the Wisconsin retirement system.

(s) Shall reimburse the legislative audit bureau for the cost of audits required to be performed under s. 13.94 (1) (dc) and (dd).

(t) Shall ensure that the Wisconsin retirement system complies with the internal revenue code as a qualified plan for income tax purposes and shall ensure that each benefit plan is administered in a manner consistent with all internal revenue code provisions that authorize and regulate the benefit plan.

(u) Shall ensure that the department include on all publications that are printed beginning on October 14, 1997, and that are intended for distribution to participants the toll-free telephone number of the department, if the department has such a telephone number.

(v) May settle any dispute in an appeal of a determination made by the department that is subject to review under sub. (1) (j), (6) (i), (7) (f), or (8) (f), or s. 40.80 (2g), but only with the approval of the board having the authority to accept the appeal. In deciding whether to settle such a dispute, the secretary shall consider the cost of litigation, the likelihood of success on the merits, the cost

of delay in resolving the dispute, the actuarial impact on the trust fund, and any other relevant factor the secretary considers appropriate. Any moneys paid by the department to settle a dispute under this paragraph shall be paid from the appropriation account under s. 20.515 (1) (r).

(w) If the secretary determines that an otherwise eligible participant has unintentionally forfeited or otherwise involuntarily ceased to be eligible for any benefit provided under this chapter principally because of an error in administration by the department, may order the correction of the error to prevent inequity. A decision under this paragraph is not subject to review. The secretary shall submit a quarterly report to the employee trust funds board on decisions made under this paragraph.

(3) DEPARTMENT OF JUSTICE. The department of justice shall furnish legal counsel and shall prosecute or defend all actions brought by or against the board, department, group insurance board or any employee of the department as a result of the performance of the department employee's duties.

(4) STATE TREASURER. The state treasurer shall be the treasurer of the fund.

(5) ACTUARY. The actuary or actuarial firm retained under sub. (1) (d):

(a) Shall be the technical adviser of the board, the secretary and the group insurance board on any matters of an actuarial nature affecting the soundness of the fund or requiring any changes for more satisfactory operation.

(b) Shall make a general investigation at least once every 3 years of the experience of the Wisconsin retirement system relating to mortality, disability, retirement, separation, interest, employee earnings rates and of any other factors deemed pertinent and to certify, as a result of each investigation, the actuarial assumptions to be used for computing employer contribution rates, the assumed rate and the tables to be used for computing annuities and benefits, provided the tables shall not provide different benefits on the basis of sex for participants or beneficiaries similarly situated. If the assumed rate changes, the actuary shall at the same time adjust the assumptions for future changes in employee earnings rates to be consistent with the new assumed rate. The recommended actuarial assumptions shall be based on the system's own experience as identified in the general investigations unless lack of adequate information or unusual circumstances are specifically identified and fully described which require use of other groups' experience and such other experience is not inconsistent with the system's own experience. When considering or implementing new or changed benefit provisions and areas of risk, the assumptions may be based solely on the experience of other groups until 5 years of the system's own experience is available for use as long as such other experience is not inconsistent with the system's own experience.

(c) Shall determine the proper rates of premiums and contributions required, or advise as to the appropriateness of premium rates proposed by independent insurers, for each of the benefit plans provided for by this chapter.

(d) Shall make an annual valuation of the liabilities and reserves required to pay both present and prospective benefits.

(e) Shall certify the actuarial figures on the annual financial statements required under sub. (2) (e).

(6) GROUP INSURANCE BOARD. The group insurance board:

(a) 1. Shall, on behalf of the state, enter into a contract or contracts with one or more insurers authorized to transact insurance business in this state for the purpose of providing the group insurance plans provided for by this chapter; or

2. May, wholly or partially in lieu of subd. 1., on behalf of the state, provide any group insurance plan on a self-insured basis in which case the group insurance board shall approve a written description setting forth the terms and conditions of the plan, and may contract directly with providers of hospital, medical or ancillary services to provide insured employees with the benefits provided under this chapter.

(b) May provide other group insurance plans for employees and their dependents and for annuitants and their dependents in addition to the group insurance plans specifically provided under this chapter. The terms of the group insurance under this paragraph shall be determined by contract, and shall provide that the employer is not liable for any obligations accruing from the operation of any group insurance plan under this paragraph except as agreed to by the employer.

(c) Shall not enter into any agreements to modify or expand group insurance coverage in a manner which conflicts with this chapter or rules of the department or materially affects the level of premiums required to be paid by the state or its employees, or the level of benefits to be provided, under any group insurance coverage. This restriction shall not be construed to prevent modifications required by law, prohibit the group insurance board from modifying the standard plan to establish a more cost effective benefit plan design or providing optional insurance coverages as alternatives to the standard insurance coverage when any excess of required premium over the premium for the standard coverage is paid by the employee or prohibit the group insurance board from providing other plans as authorized under par. (b).

(d) May take any action as trustees which is deemed advisable and not specifically prohibited or delegated to some other governmental agency, to carry out the purpose and intent of the group insurance plans provided under this chapter, including, but not limited to, provisions in the appropriate contracts relating to:

1. Eligibility of active and retired employees to participate, or providing the employee the opportunity to decline participation or to withdraw.

2. The payments by employees for group insurance.

3. Enrollment periods and the time group insurance coverage shall be effective.

4. The time that changes in coverage and premium payments shall take effect.

5. The terms and conditions of the insurance contract or contracts, including the amount of premium.

6. The date group insurance contracts shall be effective.

7. Establishment of reserves.

(e) Shall apportion all excess moneys becoming available to it through operation of the group insurance plans to reduce premium payments in following contract years or to establish reserves to stabilize costs in subsequent years. If it is determined that the excess became available due to favorable experience of specific groups of employers or specific employee groups, the apportionment may be made in a manner designated to benefit the specific employers or employee groups only, or to a greater extent than other employers and employee groups.

(f) Shall take prompt action to liquidate any actuarial or cash deficit which occurs in the accounts and reserves maintained in the fund for any group insurance benefit plan.

(g) Shall determine the amount of insurance and extent of coverage provided and amount of premiums required during a union service leave. The amount of insurance and extent of coverage shall be not less than that in effect immediately preceding the commencement of the union service leave.

(h) Shall, on behalf of the state, offer as provided in s. 40.55 long-term care insurance policies, subject to the following conditions:

1. For purposes of this paragraph only, pars. (a) 2., (b), (e), (f) and (g) do not apply.

2. For purposes of this section, the offering by the state of long-term health insurance policies shall constitute a group insurance plan under par. (a) 1.

(i) May accept timely appeals of determinations made by the department affecting any right or benefit under any group insurance plan provided for under this chapter.

(j) May contract with the department of health and family services and may contract with other public or private entities for data

collection and analysis services related to health maintenance organizations and insurance companies that provide health insurance to state employees.

(7) TEACHERS RETIREMENT BOARD. The teachers retirement board:

(a) Shall appoint 4 members of the employee trust funds board as provided under s. 15.16 (1).

(b) Shall study and recommend to the secretary and the employee trust funds board alternative administrative policies and rules which will enhance the achievement of the objectives of the benefit programs for teacher participants.

(c) Shall appoint one member of the investment board as provided under s. 15.76 (3).

(d) Shall approve or reject all administrative rules proposed by the secretary under sub. (2) (i) that relate to teachers, except rules promulgated under s. 40.30.

(e) Shall authorize and terminate the payment of disability annuity payments to teacher participants in accordance with this chapter.

(f) Shall accept timely appeals of determinations made by the department regarding disability annuities for teacher participants in accordance with s. 40.63 (5) and (9) (d).

(g) May amend any rule of the department, the Milwaukee teachers retirement board, the state teachers retirement board and the Wisconsin retirement fund board, which are in effect on January 1, 1982, in such a manner as to make it no longer applicable to teacher participants.

(8) WISCONSIN RETIREMENT BOARD. The Wisconsin retirement board:

(a) Shall appoint 4 members of the employee trust funds board as provided under s. 15.16 (1).

(b) Shall study and recommend to the secretary and the employee trust funds board alternative administrative policies and rules which will enhance the achievement of the objectives of the benefit programs for participants other than teachers.

(c) Shall appoint one member of the investment board as provided under s. 15.76 (3).

(d) Shall approve or reject all administrative rules proposed by the secretary under sub. (2) (i) that relate to participants other than teachers, except rules promulgated under s. 40.30.

(e) Shall authorize and terminate the payment of disability annuity payments to participants other than teachers in accordance with this chapter.

(f) Shall accept timely appeals of determinations made by the department regarding disability annuities for participants other than teachers in accordance with s. 40.63 (5) and (9) (d).

(g) May amend any rule of the department, the Milwaukee teachers retirement board, the state teachers retirement board and the Wisconsin retirement fund board, which are in effect on January 1, 1982, in such a manner as to make it no longer applicable to participants other than teachers.

(9) DEFERRED COMPENSATION BOARD. The deferred compensation board shall have the powers and duties provided under s. 40.80 (2) and (2m).

History: 1981 c. 96 ss. 24, 32; 1981 c. 386; 1983 a. 247; 1985 a. 29; 1985 a. 332 ss. 53, 251 (1); 1987 a. 356; 1989 a. 31, 166, 323; 1991 a. 116, 141, 152, 269; 1993 a. 16; 1995 a. 302, 414; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25, 153.

Cross Reference: See also ETF, Wis. adm. code.

The insurance subrogation law permitting a subrogated insurer to be reimbursed only if the insured has been made whole applies to the state employee health plan. *Leonard v. Dusek*, 184 Wis. 2d 267, 516 N.W.2d 463 (Ct. App. 1994).

An appeal to the board was an inadequate remedy under the facts of the case because the board does not have the statutory authority to award interest on delayed benefit payments based either on a claim of unjust enrichment or a takings claim under Art. I, s. 13. The doctrine of exhaustion of administrative remedies did not require an appeal of the department's dismissal of the claim to the board before filing a court action. *Fazio v. Department of Employee Trust Funds*, 2002 WI App 127, 255 Wis. 2d 801, 645 N.W.2d 618, 01–2595.

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a court action. *Fazio v. Department of Employee Trust Funds*, 2002 WI App 127, 255 Wis. 2d 801, 645 N.W.2d 618, 01–2595. Affirmed on other grounds. 2006 WI 7, 287 Wis. 2d 106, 708 N.W.2d 326, 04–0064.

40.04 Accounts and reserves. (1) The separate accounts and reserves under subs. (2) to (10) and any additional accounts and reserves determined by the department to be useful in achieving the fund's purposes, or necessary to protect the interests of the participants or the future solvency of the fund, shall be maintained within the fund. The accounts and reserves maintained for each benefit plan shall fairly reflect the operations of that benefit plan. Any deficit occurring within the accounts of a benefit plan shall be eliminated as soon as feasible by increasing the premiums, contributions or other charges applicable to that benefit plan. Until eliminated, any deficit shall be charged with interest at the rate the funds would have earned if there had been no deficit.

(2) (a) An administrative account shall be maintained within the fund from which administrative costs of the department shall be paid, except charges for services performed by the investment board, costs of medical and vocational evaluations used in determinations of eligibility for benefits under ss. 40.61, 40.63 and 40.65 and costs of contracting for insurance data collection and analysis services under s. 40.03 (6) (j).

(b) Except as otherwise provided in this section, investment income of this fund and moneys received for services performed or to be performed by the department shall be credited to this account.

(c) The secretary shall estimate the administrative costs to be incurred by the department in each fiscal year and shall also estimate the investment income which will be credited to this account in the fiscal year. The estimated administrative costs less the estimated investment income shall be equitably allocated by the secretary, with due consideration being given to the derivation and amount of the investment income, to the several benefit plans administered by the department. In determining the amount of the allocation, adjustments shall be made for any difference in prior years between the actual administrative costs and investment income from that originally estimated under this paragraph. An amount equal to the adjusted allocated costs shall be transferred to this account from the investment earnings credited to the respective benefit plan accounts and from payments by the respective insurers or employee-funded reimbursement plan providers for administrative services.

(d) The costs of investing the assets of the benefit plans and retirement systems, including all costs due to s. 40.03 (1) (n), shall be paid from the appropriation under s. 20.515 (1) (r) and charged directly against the appropriate investment income or reserve accounts of the benefit plan or retirement system receiving the services.

(e) The costs of contracting for insurance data collection and analysis services under s. 40.03 (6) (j) shall be paid from the appropriation under s. 20.515 (1) (ut).

(3) A core retirement investment trust and a variable retirement investment trust shall be maintained within the fund under the jurisdiction and management of the investment board for the purpose of managing the investments of the retirement reserve accounts and of any other accounts of the fund as determined by the board, including the accounts of separate retirement systems. Within the core retirement investment trust there shall be maintained a transaction amortization account and a market recognition account, and any other accounts as are established by the board or the investment board. A current income account shall be maintained in the variable retirement investment trust. All costs of owning, operating, protecting, and acquiring property in which either trust has an interest shall be charged to the current income or market recognition account of the trust having the interest in the property.

(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.

(ab) Beginning on December 31, 2000, the balance of the transaction amortization account shall be determined and 20 percent of the balance established on December 31, 2000, shall be distributed annually on December 31 to each participating account in the same ratio as each account's average daily balance within the core retirement investment trust bears to the total average daily balance of all participating accounts in the trust until the balance of the transaction amortization account is entirely distributed. Notwithstanding sub. (3) (intro.), after the entire balance of the transaction amortization account has been distributed, the department shall close the account.

(am) 1. Beginning on January 1, 2000, there shall be maintained within the core retirement investment trust a market recognition account. The department shall establish and administer the market recognition account as recommended by the actuary or actuarial firm retained under s. 40.03 (1) (d) and as approved by the board.

2. Annually, the total market value investment return earned by the core retirement investment trust during the year shall be credited to the market recognition account.

3. 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:

a. The expected amount of investment return in the core retirement investment trust during the year based on the assumed rate.

b. An amount equal to 20 percent of the difference between the total market value investment return earned by the core retirement investment trust and the expected amount of investment return of the core retirement investment trust during the year ending on December 31 based on the assumed rate.

c. An amount equal to 20 percent of the sum of the differences between the total market value investment return earned by the core retirement investment trust and the expected amount of investment return of the core retirement investment trust at the end of the 4 preceding years. For the purpose of making this calculation, the amount in the market recognition account at the end of each year that occurs before the year 2000 shall be assumed to be zero.

(b) The assets of the core retirement investment trust shall be commingled and the assets of the variable retirement investment trust shall be commingled. No particular contributing benefit plan shall have any right in any specific item of cash, investment, or other property in either trust other than an undivided interest in the whole as provided in this paragraph. The department of administration shall maintain any records as may be required to account for each contributing account's share in the corresponding trust except that the employee accumulation reserve, the employer accumulation reserve and the annuity reserve shall be treated as a single account, except as provided in sub. (7).

(c) The department shall advise the investment board and the secretary of administration as to the limitations on the amounts of cash to be invested from investment trusts under this subsection in order to maintain the cash balances deemed advisable to meet current annuity, benefit and expense requirements.

(d) Notwithstanding par. (a), assets of the core retirement investment trust which are authorized to be invested in common or preferred stock may, if authorized by rule, be invested as a part of the variable retirement investment trust with that portion of the

annual distributions of net gains or losses to the core retirement investment trust from the variable retirement investment trust being credited to the market recognition account.

(4) (a) An employee accumulation reserve, within which a separate account shall be maintained for each participant, shall be maintained within the fund and:

1. Credited with all employee contributions made under s. 40.05 (1), all employer additional contributions made under s. 40.05 (2) (g) 1., all additional contributions under s. 40.05 (2) (g) 2. and all contribution accumulations reestablished under s. 40.26 or 40.63 (10).

2. Credited as of each December 31 with interest on the prior year's closing balance at the effective rate on all employee required contribution accumulations in the variable annuity division, on all employee required contributions in the core annuity division on December 31, 1984, on all employee required contributions in the core annuity division of participants who are not participating employees after December 31, 1984, and on all employee and employer additional contribution accumulations and with interest on the prior year's closing balance at the assumed benefit rate on all employee required contribution accumulations in the core annuity division for participants who are participating employees after December 31, 1984, but who terminated covered employment before December 30, 1999.

2g. Credited as of each December 31, with interest on the prior year's closing balance at the effective rate on all employee required contribution accumulations in the core annuity division for participants who are participating employees on or after December 30, 1999.

2m. Debited, if a participant terminates covered employment on or after January 1, 1990, but before December 30, 1999, and applies for a benefit under s. 40.25 (2), with an amount equal to the amount by which the core annuity division interest credited on or after January 1, 1990, but before December 30, 1999, to employee required contributions, exceeds the interest crediting at an annual rate of 3 percent on each prior year's closing balance.

3. Debited by the amount available in any participant's account for funding a benefit elected by the participant or the participant's beneficiary. When the amount available has been applied to funding the benefit, no further right to the amounts, or to corresponding creditable service and employer contribution accumulations, shall exist other than the right to the annuity or benefit so granted except as provided in s. 40.26 or 40.63 (10).

(b) Whenever a payment under s. 40.25 (4), an annuity or a death benefit is computed, the prior year's closing balance of all employee contribution accumulations and any accounts maintained for individual participants shall be credited with interest for each full month elapsing between the first day of the calendar year and the annuity effective date or the month in which the payment of a benefit under s. 40.25 (4) is approved at one-twelfth of the assumed benefit rate. The interest so credited shall be charged to the interest earnings for the current year and shall be paid out or transferred with the amount to which it was so credited.

(bm) Whenever a payment under s. 40.25 (1) is computed under s. 40.23 (3), the prior year's closing balance of all employee and employer contribution accumulations and any accounts maintained for individual participants shall be credited with interest for each full month elapsing between the first day of the calendar year and the month in which the payment under s. 40.25 (1) is approved at one-twelfth of the assumed benefit rate. The interest so credited shall be charged to the interest earnings for the current year and shall be paid out or transferred with the amount to which it was so credited.

(c) Whenever a participant's account is reestablished under s. 40.26 (2) or 40.63 (10), in lieu of interest credits as provided in par. (a), any balances remaining in the account at the end of the calendar year in which reestablished shall be credited with interest at one-twelfth the assumed benefit rate for the year for each full

month between the date the account was reestablished and the end of the calendar year.

(5) An employer accumulation reserve shall be maintained within the fund to which, without regard to the identity of the individual employer, shall be:

(a) Credited all employer required contributions.

(b) Credited, as of each December 31, all core annuity division interest not credited to other accounts and reserves under this section.

(c) Debited the aggregate excess of the amount of each single sum benefit or in the case of an annuity the present value of the annuity over the amount equal to the accumulated credits of the participant in the employee accumulation reserve applied to provide for the benefit or annuity.

(d) Credited as of the date of termination of any annuity under s. 40.26 or 40.63 (9) (c) with the excess of the then present value of the terminated annuity over the aggregate amount of credits reestablished in the accounts of the participant.

(e) Credited all amounts waived, released or forfeited under any provision of this chapter.

(6) An annuity reserve shall be maintained within the fund to which shall be transferred amounts equal to the present value as of the date of commencement of annuities granted under this chapter. The reserve shall be increased by investment earnings at the effective rate and shall be reduced by the aggregate amount of annuity payments and death benefits paid with respect to the annuities and by the present value at the date of termination of annuities terminated in accordance with s. 40.08 (3), 40.26 or 40.63 (9) (c).

(7) The reserves established under subs. (4), (5), and (6) shall be divided both individually and for the purposes of sub. (3) between a core annuity division and a variable annuity division. All required and additional contributions shall be credited to the core annuity division except:

(a) As otherwise elected by a participant prior to April 30, 1980, or on or after January 1, 2001. Any participant who was a participant prior to April 30, 1980, and whose accounts on January 1, 1982, include credits segregated for a variable annuity shall have his or her required and additional contributions made on or after January 1, 1982, credited to the variable annuity division in a manner consistent with the participant's election prior to April 30, 1980, unless prior to January 1, 1982, the participant terminated such election under s. 40.85, 1979 stats. Any participant who elects or has elected to have any of his or her credits segregated for a variable annuity on or after January 1, 2001, shall have 50 percent of his or her required and additional contributions made on or after the date of election credited to the variable annuity division. The department shall by rule provide that any participant who elects or has elected variable participation prior to April 30, 1980, or on or after January 1, 2001, may elect to cancel that variable participation as to future contributions. The department's rules shall permit a participant who elects or has elected to cancel variable participation as to future contributions, or an annuitant, to elect to transfer previous variable contribution accumulations to the core annuity division. A transfer of variable contribution accumulations under this paragraph shall result in the participant receiving the accrued gain or loss from the participant's variable participation. A participant may specify that election to cancel participation in the variable annuity division is conditional. If the participant so specifies the election is effective on the first date on which it may take effect on which the participant:

1. Is an annuitant and the amount of the annuity the participant or member will receive if the election is made effective is greater than or equal to the amount of the annuity the participant or member would have received if the participant or member had not elected variable participation; or

2. Is not an annuitant and the accumulated amount which is to be transferred to the core annuity division is equal to or greater

than the amount which would have accumulated if the segregated contributions had been originally credited to the core annuity division.

(b) An election under par. (a) is irrevocable and continuing except a participant or member may make a conditional election unconditional by filing written notice with the department.

(c) Any participant whose required contributions are segregated in any portion to provide for a variable annuity may direct that any part or all of subsequent additional contributions credited to the participant's account be segregated to provide for a variable annuity and may at any time by filing a form prescribed by the department change the portion being segregated for any future additional contributions.

(8) A social security account shall be maintained within the fund to which shall be credited all moneys received from employee and employer OASDHI contributions including any penalties for late transmission of moneys or reports. All disbursements under subch. III shall be charged to this account.

(9) Separate group health, income continuation and life insurance accounts, and additional accounts for any other type of insurance provided under this chapter shall be maintained within the fund, to which shall be credited moneys received from operations of the respective group insurance plans for insurance premiums, as dividend or premium credits arising from the operation of the respective insurance plans and from investment income on any reserves established in the fund for the respective insurance plans. Premium payments to insurers, any insurance benefit to be paid directly by the fund and reimbursements of 3rd parties for benefits paid on behalf of an insurance plan shall be charged to the corresponding account established for that benefit plan. This subsection shall not be construed to prohibit the direct payment of premiums to insurers when appropriate administrative procedures have been established for direct payments.

(9m) The department shall do all of the following:

(a) Maintain a separate account in the fund for each employee-funded reimbursement account plan authorized under subch. VIII.

(b) Credit to the appropriate accounts established under par. (a) money received from employees in connection with each employee-funded reimbursement account plan and income from investment of the reserves in the account.

(c) Charge to the appropriate accounts established under par. (a) payments made to reimburse employee-funded reimbursement account plan providers for payments made to employees under each employee-funded reimbursement account plan under subch. VIII.

(10) An accumulated sick leave conversion account shall be maintained within the fund, to which shall be credited all money received under s. 40.05 (4) (b), (bc), (bf), (bm), (br), and (bw) for health insurance premiums, as dividends or premium credits arising from the operation of health insurance plans and from investment income on any reserves established in the fund for health insurance purposes for retired employees and their surviving dependents. Premium payments to health insurers authorized in s. 40.05 (4) (b), (bc), (bf), (bm), and (bw) shall be charged to this account. This subsection does not prohibit the direct payment of premiums to insurers when appropriate administrative procedures have been established for direct payments.

(11) A health insurance premium credit account shall be maintained within the fund, to which shall be credited all moneys received under s. 40.05 (4) (by) for the payment of health insurance premiums, as dividends or premium credits arising from the operation of health insurance plans and from investment income on any reserves established in the fund for health insurance purposes for retired employees and their surviving dependents. Premium payments to health insurers authorized in subch. IX may only be charged to this account after all other health insurance premium credits under s. 40.05 (4) (b), (bc), (bf), (bm) and (bw) are

exhausted. This subsection does not prohibit the direct payment of premiums to insurers when appropriate administrative procedures have been established for direct payments.

History: 1981 c. 96, 386; 1983 a. 27, 141, 247, 504; 1987 a. 27, 83; 1989 a. 13, 14, 31, 355; 1991 a. 39, 141, 152, 269; 1995 a. 88, 89, 225, 240; 1997 a. 26, 69; 1999 a. 11; 2001 a. 16; 2003 a. 33; 2005 a. 153.

An employee sick leave account cannot be considered an asset of a marital estate subject to division in a divorce action. *Preiss v. Preiss*, 2000 WI App 185, 238 Wis. 2d 368, 617 N.W.2d 514, 99–3261.

40.05 Contributions and premiums. (1) **EMPLOYEE RETIREMENT CONTRIBUTIONS.** For Wisconsin retirement system purposes employee contributions on earnings for service credited as creditable service shall be subject to the annual compensation limits under 26 USC 401 (a) (17) for a participating employee who first becomes a participating employee on or after January 1, 1996, and shall be made as follows:

(a) Except as provided in par. (b) and sub. (2n):

1. For each participating employee not otherwise specified, 5% of each payment of earnings.

2. For each participating employee whose formula rate is determined under s. 40.23 (2m) (e) 2., 5.5% of each payment of earnings.

3. For each participating employee whose formula rate is determined under s. 40.23 (2m) (e) 3., 6% of each payment of earnings.

4. For each participating employee whose formula rate is determined under s. 40.23 (2m) (e) 4., 8% of each payment of earnings.

5. Additional contributions may be made by any participant by deduction from earnings or otherwise or may be provided on behalf of any participant in any calendar year in which the participant has earnings, subject to any limitations imposed on contributions by the internal revenue code, applicable regulations adopted under the internal revenue code and rules of the department.

6. Under the rules promulgated under s. 40.03 (2) (r), additional contributions, other than the first \$5,000 of contributions, or a beneficiary's prorated share thereof, that are attributable to a death benefit paid under s. 40.73, may be made to the core annuity division by any participant by rollover contribution of a payment or distribution from a pension or annuity qualified under section 401 of the Internal Revenue Code, subject to any limitations imposed on contributions by the Internal Revenue Code, applicable regulations adopted under the Internal Revenue Code, and rules of the department.

(b) In lieu of employee payment, the employer may pay all or part of the contributions required by par. (a), but all the payments shall be available for benefit purposes to the same extent as required contributions deducted from earnings of the participating employees. Action to assume employee contributions as provided under this paragraph shall be taken at the time and in the form determined by the governing body of the participating employer. The state shall pay under this paragraph for employees who are covered by a collective bargaining agreement under subch. V of ch. 111 and for employees whose fringe benefits are determined under s. 230.12 an amount equal to 4% of the earnings paid by the state unless otherwise provided in a collective bargaining agreement under subch. V of ch. 111 or unless otherwise determined under s. 230.12. The University of Wisconsin Hospitals and Clinics Authority shall pay under this paragraph for employees who are covered by a collective bargaining agreement under subch. I of ch. 111 and for employees whose fringe benefits are determined under s. 233.10 an amount equal to 4% of the earnings paid by the authority unless otherwise provided in a collective bargaining agreement under subch. I of ch. 111 or unless otherwise determined under s. 233.10. The state shall pay under this paragraph for employees who are not covered by a collective bargaining agreement under subch. V of ch. 111 and for employees whose fringe benefits are not determined under s. 230.12 an amount equal to 4% of the earnings paid by the state unless a different amount is recommended by the director of the office of state

employment relations and approved by the joint committee on employment relations in the manner provided for approval of changes in the compensation plan under s. 230.12 (3). The University of Wisconsin Hospitals and Clinics Authority shall pay under this paragraph for its employees who are not covered by a collective bargaining agreement under subch. I of ch. 111 an amount equal to 4% of the earnings paid by the authority unless a different amount is established by the board of directors of the authority under s. 233.10.

(2) **EMPLOYER RETIREMENT CONTRIBUTIONS.** For Wisconsin retirement system purposes and subject to the annual compensation limits under 26 USC 401 (a) (17) for a participating employee who first becomes a participating employee on or after January 1, 1996:

(a) Each participating employer shall make contributions for current service determined as a percentage of the earnings of each participating employee, determined as though all employees of all participating employers were employees of a single employer, but with a separate percentage rate determined for the employee occupational categories specified under s. 40.23 (2m). A separate percentage shall also be determined for subcategories within each category determined by the department to be necessary for equity among employers.

(am) The percentage of earnings under par. (a) shall be determined on the basis of the information available at the time the determinations are made and on the assumptions the actuary recommends and the board approves by dividing the amount determined by subtracting from the then present value of all future benefits to be paid or purchased from the employer accumulation reserve on behalf of the then participants the amount then credited to the reserve for the benefit of the members and the present value of future unfunded prior service liability contributions of the employers under par. (b) by the present value of the prospective future compensation of all participants.

(ar) Participating employers of employees subject to s. 40.65 shall contribute an additional percentage or percentages of those employees' earnings based on the experience rates determined to be appropriate by the board with the advice of the actuary.

(b) Contributions shall be made by each participating employer for unfunded prior service liability in a percentage of the earnings of each participating employee. A separate percentage rate shall be determined for the employee occupational categories under s. 40.23 (2m) as of the employer's effective date of participation. The rates shall be sufficient to amortize as a level percent of payroll over a period of 40 years from the later of that date or January 1, 1986, the unfunded prior service liability for the categories of employees of each employer determined under s. 40.05 (2) (b), 1981 stats., increased to reflect any creditable prior service granted on or after January 1, 1986, increased to reflect the effect of 1983 Wisconsin Act 141, increased at the end of each calendar year after January 1, 1986, by interest at the assumed rate on the unpaid balance at the end of the year and adjusted under pars. (bu), (bv) and (bw).

(bg) Contributions of amounts under par. (b) may be made in advance to reduce an employer's existing unfunded prior service liability.

(bm) Contributions under par. (b) for each category of employee shall be made until full payment of that employer's unfunded prior service liability for all categories is made.

(br) The contribution under par. (b) by an employer in any calendar year before full payment of the unfunded prior service liability determined under par. (bm) may not be less than the dollar amount determined to be necessary in the first calendar year of the amortization schedule established by par. (b).

(bt) The department may reallocate prior service liability from one employer to another and adjust as necessary the contribution rates established under par. (b) to reflect transfers of responsibilities and employees among different employers.

(bu) The employer contribution rate determined under par. (b) for each employer shall be adjusted, if necessary, to reflect the added prior service liability of paying additional joint and survivor death benefits to beneficiaries of participating employees as a result of 1997 Wisconsin Act 58 and that rate shall be sufficient to amortize the unfunded prior service liability of the employers over the remainder of the 40-year amortization period under par. (b).

(bv) The employer contribution rate determined under par. (b) for participating employees who served in the U.S. maritime service shall be adjusted to reflect the cost of granting creditable service under s. 40.02 (15) (a) 7. and that rate shall be sufficient to amortize the unfunded prior service liability of the employers over the remainder of the 40-year amortization period under par. (b).

(bw) The employer contribution rate determined under par. (b) for the University of Wisconsin System shall be adjusted to reflect the cost of granting creditable service under s. 40.285 (2) (e) and that rate shall be sufficient to amortize the unfunded prior service liability of the employers over the remainder of the 40-year amortization period under par. (b).

(bz) The employer contribution rate determined under par. (b) for the department of administration shall be adjusted to reflect the cost of granting creditable service under s. 40.02 (17) (gm) and that rate shall be sufficient to amortize the unfunded prior service liability of the department of administration over the remainder of the 40-year amortization period under par. (b).

(c) The percentage rates determined under this subsection shall become effective as of the beginning of the calendar year to which they are applicable and shall remain in effect during the calendar year, except that the secretary, upon the written certification of the actuary, may change any percentage determined under par. (b) during any calendar year for the purpose of reflecting any reduced obligation which results from any payment of advance contributions.

(cm) The department may adjust the unfunded prior service liability balance of the Wisconsin retirement system under par. (b) and of each employer that makes contributions under par. (b) to reflect any changes in the assumed rate and the assumption for across-the-board salary increases specified in s. 40.02 (7) and any other factor specified by the actuary if the actuary recommends and the board approves the changes or if otherwise provided by law.

(d) The amount of each employer's monthly contribution shall be the sum of the amounts determined by applying the proper percentage rates as determined in accordance with pars. (a) and (b) to the total of all earnings paid to participating employees on each payday.

(f) Whenever the existence of any participating employer is terminated because of consolidation or for any other reason, the employer who thereafter has responsibility for the governmental functions of the previous employer shall be liable for all contributions payable by the previous employer in the following manner:

1. If the territory of the previous employer is attached to 2 or more employers, the total liability of the previous employer shall be allocated to the new employers in proportion to the equalized valuation of each area so attached.

2. Whenever the existence of any participating employer, who was an instrumentality of 2 or more employers, is terminated for any reason and there is no territory to be divided, the liability for contributions of the previous employer shall be divided between the sponsoring employers in the same proportion as the net assets of the terminating employer are divided.

3. If the department determines that it is not feasible to allocate the liability as provided in subd. 1. or 2., then the liability shall be allocated in proportion to the equalized valuation of the remaining employers.

4. The amount of the allocations to the respective employers shall be certified by the department to each employer.

5. If the employer to whom such an allocation is made is or becomes a participating employer the allocations so certified shall be added to the liability otherwise determined for the employer and the amortization schedule provided for under par. (b) adjusted so that the required annual amount shall approximate the sum of the annual amounts otherwise required.

6. If the employer who becomes responsible for any part of the liability of the previous employer is not a participating employer the contributions required to liquidate the allocated liability shall be made by the successor employer in equal quarterly payments sufficient to liquidate the allocated liability over the remainder of the amortization period.

7. If an allocation based on equalized valuation is required by this paragraph, the equalized valuations used shall be the valuation determined for the calendar year immediately preceding the calendar year in which the allocation is required to be made by this paragraph.

8. If it is not possible to apply the procedures under this paragraph, the terminating employer and any successor employer shall immediately pay the full outstanding prior service liability balance unless an agreement for a different procedure is approved by the department.

(g) 1. A participating employer may make contributions as provided in its compensation agreements for any participating employee in addition to the employer contributions required by this subsection. The additional employer contributions made under this paragraph shall be available for all benefit purposes and shall be administered and invested on the same basis as employee additional contributions made under sub. (1) (a) 5., except that ss. 40.24 (1) (f), 40.25 (4), and 40.285 (2) (a) 1. c. do not apply to additional employer contributions made under this paragraph.

2. Under the rules promulgated under s. 40.03 (2) (r), a participant may, as a payout option for the deferred compensation plan established under subch. VII, elect to have the entire balance in the participant's account under subch. VII treated as an additional contribution to the core annuity division, subject to any limitations imposed on contributions by the Internal Revenue Code, applicable regulations adopted under the Internal Revenue Code, and rules of the department. Additional contributions under this subdivision shall be available for all benefit purposes and shall be administered and invested on the same basis as employee additional contributions, except that ss. 40.24 (1) (f) and 40.25 (4) do not apply to additional contributions under this subdivision and s. 40.26 does not apply to an annuity received from additional contributions under this subdivision.

(i) If an annuity is calculated under s. 40.02 (42) (f), 1987 stats., the employer shall pay to the department the difference, as determined by the department, between the actuarial cost of the annuity which would have been paid if the employer had not elected under s. 42.245 (2) (bm), 1979 stats., or s. 42.78 (2) (bm), 1979 stats., or s. 40.02 (42) (f) 2., 1987 stats., and the actual cost of the annuity payable. The amount payable shall be paid to the department in 3 equal annual payments, plus interest at the effective rate unless the employer pays the full amount due. Each annual payment is due and shall be included with the first payment made under s. 40.06 (1) in each fiscal year after the annuity effective date. The amount so paid shall be credited as employer required contributions.

(2m) BENEFIT ADJUSTMENT CONTRIBUTION. Except as provided in sub. (2n), in addition to the amounts under subs. (1) and (2), a benefit adjustment contribution equal to 1% of earnings shall be paid by or for participating employees whose formula rate is determined under s. 40.23 (2m) (e) 1. and 3. This contribution shall be deducted from each payment of earnings to participating employees unless the employer provides through its compensation provisions or agreements that all or part of the contribution will be paid by the employer. For benefit purposes, this contribution shall be treated as if it were an employer required contribution regardless of whether the employer or the employee pays the con-

tribution and, for a participating employee who first becomes a participating employee on or after January 1, 1996, shall be subject to the annual compensation limits under 26 USC 401 (a) (17).

(2n) CONTRIBUTION RATE ADJUSTMENT. (a) If the board, on the advice of the actuary, determines that an increase or decrease in contribution rates is necessary for any annual period after 1989, the board, on the advice of the actuary, shall adjust contribution rates in the following manner:

1. One-half of the increase or decrease in contribution rates shall be provided for by an increase or decrease in employer contributions under sub. (2) (a) and (am), except as provided in subd. 3.

2. One-half of the increase or decrease in contribution rates shall be provided for by an increase or decrease in benefit adjustment contributions under sub. (2m), except as provided in subd. 3. or par. (b).

3. Any increase in contribution rates required after 1989 that results from benefit improvements under 1989 Wisconsin Act 13, which would otherwise increase employer contribution rates over the 1989 rate shall be provided for by an increase in benefit adjustment contributions under sub. (2m). Notwithstanding sub. (2m), an employer may not pay for all or part of any increase in benefit adjustment contributions that is required under this subdivision.

(b) If under par. (a) 2. a decrease in benefit adjustment contributions under sub. (2m) would reduce the amount under sub. (2m) to less than zero, the employee contribution rates under sub. (1) shall be decreased.

(2r) ANNUAL CONTRIBUTIONS LIMITATIONS; DISQUALIFICATION PROCEDURE. (a) Contributions made under this section are subject to the limitations under s. 40.32 and the internal revenue code.

(b) If a participant in the Wisconsin retirement system also participates in a different retirement plan offered by an employer that is subject to section 401 of the internal revenue code and the internal revenue service seeks to disqualify one or more of the plans because the aggregate contributions to the plans exceed the contribution limits under section 415 of the internal revenue code, the internal revenue service, if it permits state law to determine the order of disqualification of such retirement plans, shall disqualify the retirement plans in the following order:

1. Retirement plans offered and administered by the employer.

2. Retirement plans offered by the employer, but administered by the department.

3. The Wisconsin retirement system.

(3) SOCIAL SECURITY CONTRIBUTIONS. Each employer included under an agreement made under subch. III shall make the contributions required under federal regulations and shall also withhold from the wages of each of its employees who are covered by the state–federal agreement provided for by subch. III the amount required to be withheld under federal regulations. The state shall be liable for all remittances due from employers in conformity with agreements under subch. III and shall make payment of all sums which are due under this subsection and become delinquent.

(4) HEALTH INSURANCE PREMIUMS. (a) 1. For health insurance, each insured employee and insured retired employee shall contribute the balance of the required premium amounts after applying required employer contributions, if any.

2. For an insured employee who is an eligible employee under s. 40.02 (25) (a) 2. or (b) 1m., the employer shall pay required employer contributions toward the health insurance premium of the insured employee beginning on the date on which the employee becomes insured. For an insured employee who is currently employed but who is not an eligible employee under s. 40.02 (25) (a) 2. or (b) 1m., the employer shall pay required employer contributions toward the health insurance premium of the insured employee beginning on the first day of the 7th month beginning after the date on which the employee begins employment with the state, not including any leave of absence.

3. The employer shall continue to pay required employer contributions toward the health insurance premium of an insured employee while the insured employee is on a leave of absence, as follows:

a. Only for the first 3 months of the leave of absence, except as provided in subd. 3. b.

b. Unless otherwise provided in the compensation plan under s. 230.12, for the entire leave of absence if the insured employee is receiving temporary disability compensation under s. 102.43.

(ad) For health insurance, each insured retired employee who elects coverage under s. 40.51 (10), (10m) or (16) shall pay the entire amount of the required premiums, except as provided in par. (bc).

(ag) Beginning on January 1, 2004, except as otherwise provided in accordance with a collective bargaining agreement under subch. I or V of ch. 111 or s. 230.12 or 233.10, the employer shall pay for its currently employed insured employees:

1. For insured part-time employees other than employees specified in s. 40.02 (25) (b) 2., including those in project positions as defined in s. 230.27 (1), who are appointed to work less than 1,566 hours per year, an amount equal to 50% of the employer contribution under subd. 2.

2. For eligible employees not specified in subd. 1., regardless of the plan selected by the employee, not less than 80% of the average premium cost of plans offered in the tier with the lowest employee premium cost under s. 40.51 (6).

(ar) The employer shall pay under par. (a) for employees who are not covered by a collective bargaining agreement under subch. I or V of ch. 111 and for employees whose health insurance premium contribution rates are not determined under s. 230.12 or 233.10 an amount equal to the amount specified in par. (ag) unless a different amount is recommended by the director of the office of state employment relations and approved by the joint committee on employment relations in the manner provided for approval of changes in the compensation plan under s. 230.12 (3).

(b) Except as provided under pars. (bc) and (bp), accumulated unused sick leave under ss. 13.121 (4), 36.30, 230.35 (2), 233.10, and 757.02 (5) and subch. I or V of ch. 111 of any eligible employee shall, at the time of death, upon qualifying for an immediate annuity or for a lump sum payment under s. 40.25 (1) or upon termination of creditable service and qualifying as an eligible employee under s. 40.02 (25) (b) 6. or 10., be converted, at the employee's highest basic pay rate he or she received while employed by the state, to credits for payment of health insurance premiums on behalf of the employee or the employee's surviving insured dependents. Any supplemental compensation that is paid to a state employee who is classified under the state classified civil service as a teacher, teacher supervisor, or education director for the employee's completion of educational courses that have been approved by the employee's employer is considered as part of the employee's basic pay for purposes of this paragraph. The full premium for any eligible employee who is insured at the time of retirement, or for the surviving insured dependents of an eligible employee who is deceased, shall be deducted from the credits until the credits are exhausted and paid from the account under s. 40.04 (10), and then deducted from annuity payments, if the annuity is sufficient. The department shall provide for the direct payment of premiums by the insured to the insurer if the premium to be withheld exceeds the annuity payment. Upon conversion of an employee's unused sick leave to credits under this paragraph or par. (bf), the employee or, if the employee is deceased, the employee's surviving insured dependents may initiate deductions from those credits or may elect to delay initiation of deductions from those credits, but only if the employee or surviving insured dependents are covered by a comparable health insurance plan or policy during the period beginning on the date of the conversion and ending on the date on which the employee or surviving insured dependents later elect to initiate deductions from those credits. If an employee or an employee's surviving insured depen-

dents elect to delay initiation of deductions from those credits, an employee or the employee's surviving insured dependents may only later elect to initiate deductions from those credits during the annual enrollment period under par. (be). A health insurance plan or policy is considered comparable if it provides hospital and medical benefits that are substantially equivalent to the standard health insurance plan established under s. 40.52 (1).

(bc) The accumulated unused sick leave of an eligible employee under s. 40.02 (25) (b) 6e. or 6g. shall be converted to credits for the payment of health insurance premiums on behalf of the employee on the date on which the department receives the employee's application for a retirement annuity or for lump sum payment under s. 40.25 (1). The employee's unused sick leave shall be converted at the eligible employee's highest basic pay rate he or she received while employed by the state. The full premium for the employee, or for the surviving insured dependents of the employee if the employee later becomes deceased, shall be deducted from the credits until the credits are exhausted and paid from the account under s. 40.04 (10), and then deducted from annuity payments, if the annuity is sufficient. The department shall provide for the direct payment of premiums by the insured to the insurer if the premium to be withheld exceeds the annuity payment.

(be) The department shall establish an annual enrollment period during which an employee or, if the employee is deceased, an employee's surviving insured dependents may elect to initiate or delay continuation of deductions from the employee's sick leave credits under par. (b). An employee or surviving insured dependent may elect to continue or delay continuation of such deductions any number of times. If an employee or surviving insured dependent has initiated the deductions but later elects to delay continuation of the deductions, the employee or surviving insured dependent must be covered by a comparable health insurance plan or policy during the period beginning on the date on which the employee or surviving insured dependent delays continuation of the deductions and ending on the date on which the employee or surviving insured dependent later elects to continue the deductions. A health insurance plan or policy is considered comparable if it provides hospital and medical benefits that are substantially equivalent to the standard health insurance plan established under s. 40.52 (1).

(bf) Any eligible employee who was granted credit under s. 230.35 (1) (gm) for service as a national guard technician, who, on December 31, 1965, had accumulated unused sick leave that was based on service performed in this state as a national guard technician before January 1, 1966, and who is a participating employee or terminated all creditable service after June 30, 1972, or, if the eligible employee is deceased, the surviving insured dependents of the eligible employee, may have that accumulated unused sick leave converted to credits for the payment of health insurance premiums on behalf of the eligible employee or the surviving insured dependents if, not later than November 30, 1996, the eligible employee or the surviving insured dependents submit to the department, on a form provided by the department, an application for the conversion. The application shall include evidence satisfactory to the department to establish the applicant's rights under this paragraph and the amount of the accumulated unused sick leave that is eligible for the conversion. The accumulated unused sick leave shall be converted under this paragraph, at the eligible employee's highest basic pay rate he or she received while employed by the state, on the date of conversion specified in par. (b) or on the last day of the 2nd month beginning after the date on which the department receives the application under this paragraph, whichever is later. Deductions from those credits, elections to delay initiation of those deductions and premium payments shall be made as provided in par. (b).

(bm) Except as provided under par. (bp), accumulated unused sick leave under ss. 36.30 and 230.35 (2) or 233.10 of any eligible employee shall, upon request of the employee at the time the employee is subject to layoff under s. 40.02 (40), be converted at

the employee's highest basic pay rate he or she received while employed by the state to credits for payment of health insurance premiums on behalf of the employee. Any supplemental compensation that is paid to a state employee who is classified under the state classified civil service as a teacher, teacher supervisor or education director for the employee's completion of educational courses that have been approved by the employee's employer is considered as part of the employee's basic pay for purposes of this paragraph. The full amount of the required employee contribution for any eligible employee who is insured at the time of the layoff shall be deducted from the credits until the credits are exhausted, the employee is reemployed, or 5 years have elapsed from the date of layoff, whichever occurs first.

(bp) 1. Except as provided in subds. 2. and 3., for sick leave which accumulates beginning on August 1, 1987, conversion under par. (b) or (bm) of accumulated unused sick leave under s. 36.30 to credits for payment of health insurance premiums shall be limited to the annual amounts of sick leave specified in this subdivision. For faculty and academic staff personnel who are appointed to work 52 weeks per year, conversion is limited to 8.5 days of sick leave per year. For faculty and academic staff personnel who are appointed to work 39 weeks per year, conversion is limited to 6.4 days of sick leave per year. For faculty and academic staff personnel not otherwise specified, conversion is limited to a number of days of sick leave per year to be determined by the secretary by rule, in proportion to the number of weeks per year appointed to work.

2. The limits on conversion of accumulated unused sick leave which are specified under subd. 1. may be waived for nonteaching faculty who are appointed to work 52 weeks per year and nonteaching academic staff personnel if the secretary of administration determines that a sick leave accounting system comparable to the system used by the state for employees in the classified service is in effect at the institution, as defined in s. 36.05 (9), and if the institution regularly reports on the operation of its sick leave accounting system to the board of regents of the University of Wisconsin System.

3. The limits on conversion of accumulated unused sick leave which are specified under subd. 1. may be waived for teaching faculty or teaching academic staff at any institution, as defined in s. 36.05 (9), if the secretary of administration determines all of the following:

a. That administrative procedures for the crediting and use of earned sick leave for teaching faculty and teaching academic staff on a standard comparable to a scheduled 40-hour work week are in operation at the institution.

b. That a sick leave accounting system for teaching faculty and teaching academic staff comparable to the system used by state employees in the classified service is in effect at the institution.

c. That the institution regularly reports on the operation of its sick leave accounting system to the board of regents of the University of Wisconsin System.

(br) 1. Employers shall pay contributions that shall be sufficient to pay for the present value of the present and future benefits authorized under pars. (b), (bc) and (bw). Subject to subd. 2., the board shall annually determine the contribution rate upon certification by the actuary of the department. The contribution rates determined under this paragraph shall become effective on January 1 of the calendar year in which they are applicable and shall remain in effect during that year.

2. Beginning in 1985, the initial contribution rate determined under subd. 1. may not exceed the employer's costs under pars. (b) and (bc) for the previous calendar year by more than 0.2% of covered payroll. Each subsequent contribution rate determined under subd. 1. may not exceed the employer's costs under this paragraph for the previous calendar year by more than 0.2% of covered payroll.

(bw) On converting accumulated unused sick leave to credits for the payment of health insurance premiums under par. (b), the department shall add additional credits, calculated in the same manner as are credits under par. (b), that are based on a state employee's accumulated sabbatical leave or earned vacation leave from the state employee's last year of service prior to retirement, or both. The department shall apply the credits awarded under this paragraph for the payment of health insurance premiums only after the credits awarded under par. (b) are exhausted. This paragraph applies only to state employees who are eligible for accumulated unused sick leave conversion under par. (b) and who are entitled to the benefits under this paragraph pursuant to a collective bargaining agreement under subch. V of ch. 111.

(by) 1. Employers shall pay contributions that are sufficient to pay for the present value of the present and future benefits authorized under subch. IX for all employees eligible to receive the benefits under that subchapter, other than state employees who are eligible to receive the benefits as a result of layoff. Except as provided in subd. 2., the board shall annually determine the contribution rate upon certification by the actuary of the department. The contribution rates determined under this paragraph shall become effective on January 1 of the calendar year in which they are applicable and shall remain in effect during that year.

2. Beginning on November 25, 1995, and ending on June 30, 1997, each employer shall pay contributions equal to the dollar value of the credits awarded to its retired employees under subch. IX, as determined and directed by the department. The board, upon certification by the actuary, shall determine the contribution rate to be paid by employers for the period beginning on July 1, 1997, and ending on December 31, 1997. In determining the contribution rate for this period, the board shall consider any remaining unfunded present and future liability for any benefits arising under subch. IX before July 1, 1997.

(c) The employer shall contribute toward the payment of premiums for the plan established under s. 40.52 (3) not more than the percentage of premium paid by the employer for health insurance coverage under par. (ag) 2.

(d) For insurance premium withholding purposes, an insured employee on more than one payroll shall have a premium withheld only under the department or agency paying the greater portion of the employee's earnings.

(4g) PAYMENT OF HEALTH INSURANCE PREMIUMS FOR STATE EMPLOYEES ACTIVATED FOR MILITARY DUTY IN THE U.S. ARMED FORCES. (a) In this subsection, "eligible employee" means a state employee to whom all of the following apply:

1. On or after April 15, 1999, is activated to serve on military duty in the U.S. armed forces, other than for training purposes.

2. On the date on which he or she is activated to serve on active duty in the U.S. armed forces, is insured and is receiving employer contributions for health insurance premiums under sub. (4).

3. On the date on which he or she is activated, is either a member of a national guard or a member of a reserve component of the U.S. armed forces or is recalled to active military duty from inactive reserve status.

4. Has received a military leave of absence under s. 230.32 (3) (a) or 230.35 (3), under a collective bargaining agreement under subch. V of ch. 111 or under rules promulgated by the director of the office of state employment relations or is eligible for reemployment with the state under s. 21.79 after completion of his or her service in the U.S. armed forces.

(b) 1. Notwithstanding sub. (4) and s. 40.51 (2), an eligible employee who is not insured after the date on which he or she is activated to serve on active duty in the U.S. armed forces may have his or her health insurance reinstated during the period in which he or she is serving on active duty in the U.S. armed forces without furnishing evidence of insurability satisfactory to the insurer and may receive employer contributions under par. (c) if the eligible employee or the eligible employee's designated repre-

sentative makes a written election to have his or her health insurance reinstated and to receive employer contributions under par. (c) and pays any employee contributions that are required to be paid under sub. (4) toward the premium payments.

2. Notwithstanding sub. (4), an eligible employee who is insured after the date on which he or she is activated to serve on active duty in the U.S. armed forces may receive employer contributions under par. (c) during the period in which he or she is serving on active duty in the U.S. armed forces if the eligible employee or the eligible employee's designated representative makes a written election to receive employer contributions under par. (c) and pays any employee contributions that are required to be paid under sub. (4) toward the premium payments.

3. An eligible employee or his or her designated representative shall make an election under subd. 1. or 2. on a form provided by his or her employer not later than 60 days after the date on which the eligible employee begins to serve on active duty for the U.S. armed forces.

4. The group insurance board shall include the period under subd. 3. in any applicable enrollment period under the state health insurance plan for eligible employees who are not insured.

(c) Notwithstanding sub. (4) and s. 40.51 (2), the employer of an eligible employee who makes or whose designated representative makes an election under par. (b) shall pay employer contributions toward the premium payments of the eligible employee during the period in which the eligible employee is serving on active duty for the U.S. armed forces as follows:

1. The amount of the employer contributions paid toward each premium payment shall be equal to the amount of the employer contributions under sub. (4) that would have been paid toward the premium payment if the eligible employee had continued employment with the employer instead of serving on active duty for the U.S. armed forces.

2. If the eligible employee has been insured during the period beginning on the date on which the eligible employee left employment with the employer to serve on active duty for the U.S. armed forces and ending on the date on which the eligible employee or the eligible employee's designated representative makes the election under par. (b) but the eligible employee did not receive employer contributions under sub. (4) toward any of the premium payments during that period, the employer shall pay to the eligible employee in a lump sum an amount equal to the employer contributions that would have been paid toward those premium payments under sub. (4) if the eligible employee had continued employment with the employer during that period instead of serving on active duty for the U.S. armed forces.

(4m) LONG-TERM CARE INSURANCE PREMIUMS. For any long-term care insurance policies provided under s. 40.55, the entire premium shall be paid as a deduction under s. 40.06 (1) (a) from an employee's earnings or a state annuitant's annuity, except that if an eligible employee is not on a state payroll or receives earnings that are insufficient to cover premium payments or a state annuitant receives an annuity that is not sufficient to cover premium payments, the eligible employee or state annuitant shall make premium payments directly to the insurer. There shall be no employer contributions.

(5) INCOME CONTINUATION INSURANCE PREMIUMS. For the income continuation insurance provided under subch. V the employee shall pay the amount remaining after the employer has contributed the following or, if different, the amount determined under a collective bargaining agreement under subch. I or V of ch. 111 or s. 230.12 or 233.10:

(a) For teachers in the unclassified service of the state employed by the board of regents of the university, no contribution if the teacher has less than one year of state creditable service and an amount equal to the gross premium for coverage subject to a 130-day waiting period if the teacher has one year or more of state creditable service.

(b) Except as provided in par. (a), for all insured employees:

1. Sixty–seven percent of the gross premium for any insured employee who accumulates 10 days of sick leave or more each year, 77% of the gross premium for any insured employee who has accumulated at least 65 days of sick leave, 85% of the gross premium if an insured employee has accumulated at least 91 days of sick leave and 100% of the gross premium if an insured employee has accumulated over 130 days of sick leave.

3. Any insured employee for whom an employer contribution of 77% or more of the premium was paid under subd. 1. shall continue to be eligible for an employer contribution of that same percentage of the premiums until the employee is eligible for a higher level even if, as a result of disability or illness, the accumulation is subsequently reduced.

4. The accrual and crediting of sick leave shall be determined in accordance with ss. 13.121 (4), 36.30, 230.35 (2), 233.10 and 757.02 (5) and subch. I or V of ch. 111.

(6) LIFE INSURANCE PREMIUMS. For the life insurance coverage provided under subch. VI:

(a) Except as otherwise provided in accordance with a collective bargaining agreement under subch. I or V of ch. 111 or s. 230.12 or 233.10, each insured employee under the age of 70 and annuitant under the age of 65 shall pay for group life insurance coverage a sum, approved by the group insurance board, which shall not exceed 60 cents monthly for each \$1,000 of group life insurance, based upon the last amount of insurance in force during the month for which earnings are paid. The equivalent premium may be fixed by the group insurance board if the annual compensation is paid in other than 12 monthly installments.

(b) Beginning with the month in which an insured employee attains age 70 or an annuitant attains the age of 65, no withholdings from the employee's earnings or annuity may be made under this subsection.

(c) Beginning with the month in which an insured employee is retired on a disability annuity, and continuing as long as the annuity is not terminated, no further premium shall be required under this subsection for the retired insured employee. No premium is required under this subsection for an insured employee during a period of disability during which premiums are waived under the insurance contract.

(d) Except as provided under par. (c), the premium payment for any insured employee whose eligibility for continued coverage is based on s. 40.72 (4) shall be deducted from the appropriate annuity payroll as authorized by s. 40.08 (2), if the annuity is sufficient, or the employee may make direct payments to continue insurance coverage or the employee's employer may pay, on behalf of the employee, the premium payment according to procedures established by the department.

(e) Each employer shall contribute toward the payment of premiums under this section an amount which, together with the employee's contribution, will equal the gross monthly premium determined by the group insurance board for the employee's insurance and any employer may pay for all employees any part or all of the premium required to be paid by employees under par. (a).

If an employer elects to pay the entire premium for all of its employees for one or more of the types of insurance coverage established under s. 40.03 (6) (b) or 40.70 (3), a resolution shall be filed with the department. Applications shall be filed and premiums paid for any eligible employees, including those not previously insured under coverage selected by the employer, effective the first day of the month following receipt of the resolution or the effective date of the election, whichever is later, and full payment of premiums for the employees shall be due the department pursuant to the contractual requirements between the group insurance board and the insurer. If an employer elects to pay the entire premium for a portion of its employees, notice is not required and previously filed cancellations are not revoked.

(7) OTHER INSURANCE PLANS PREMIUMS. For any group insurance plans provided under s. 40.03 (6) (b) the entire premium shall be paid by employee contributions and there shall be no employer

contributions unless the employer specifically provides otherwise.

(8) EMPLOYEE-FUNDED REIMBURSEMENT ACCOUNT PLAN FEE. For the administration and implementation of employee-funded reimbursement account plans authorized under subch. VIII, each state agency with employees eligible to participate in an employee-funded reimbursement account plan shall contribute the fee charged under s. 40.875 (1) (a).

History: 1981 c. 96, 274, 278, 386; 1983 a. 9 s. 6; 1983 a. 27, 30; 1983 a. 46 ss. 2 to 4, 7; 1983 a. 140; 1983 a. 141 ss. 7 to 12, 20; 1983 a. 290, 504, 538; 1985 a. 29, 119, 135, 225; 1987 a. 27, 83, 107, 309, 356, 363; 1987 a. 403 s. 256; 1989 a. 13, 14, 31, 119, 122, 166, 182, 189, 230, 336, 355, 359; 1991 a. 32, 39, 107, 113, 141, 152, 189, 269; 1995 a. 27, 81, 88, 89, 240, 302; 1997 a. 35, 58, 149; 1999 a. 9, 11, 13, 104; 2001 a. 16; 2003 a. 33 ss. 1004 to 1015, 9160; 2003 a. 69, 117; 2005 a. 22, 153.

A union request that the county make pension contributions for jailers, equal in amount to those for its "protective occupation participants" under s. 40.02 (48) did not require reclassification of the jailers as "POPS," is allowed under sub. (2) (g) 1., and is a mandatory subject of bargaining under s. 111.70 (1) (a). County of LaCrosse v. WERC, 180 Wis. 2d 100, 508 N.W.2d 9 (1993).

40.06 Reports and payments. (1) (a) Except as otherwise provided by rule or statute, the employee contributions and premium payments specified in s. 40.05 shall be deducted from the earnings of each employee and from the annuity, if sufficient, of each insured retired employee and transmitted to the department, or an agent specified by the department, in the manner and within the time limit fixed by the department together with the required employer contributions and premium payments and reports in the form specified by the department. Notwithstanding any other law, rule or regulation, the payment of earnings less the required deductions shall be a complete discharge of all claims for service rendered during the period covered by the payment.

(b) Each employer shall withhold the amounts specified from any payment of earnings to an employee whose status as a participating or insured employee has not yet been determined under s. 40.22 (1) and shall refund the amount withheld directly to the employee if it is subsequently determined that the employee does not qualify as a participating or insured employee.

(c) For state agencies, contributions paid by employers shall be made from the respective funds from which the salaries are paid to the employee for whom the contributions are being made. The heads of the respective state agencies shall, at the time that salary deductions in accordance with par. (a) are sent to the department, determine the amount of the corresponding employer contributions, indicate the amount of the contribution on the report submitted to the department and provide for payment to the department, by any method approved by the department, from the appropriate state funds of the amounts payable. If payment is by voucher, the department shall transmit the voucher to the department of administration. The department of administration shall approve vouchers for payment of contributions due under s. 40.05 within 5 working days, s. 16.53 (10) notwithstanding, and the state treasurer shall immediately issue a check, share draft or other draft to the department of employee trust funds for the amount of the voucher.

(d) Each participating employer and, subject to par. (dm), each state agency shall notify the department in the manner and at the time prescribed by the department, of the names of all participating employees classified as protective occupation participants determined in accordance with s. 40.02 (48) or classified as teacher participants in accordance with s. 40.02 (55) or other classification as specified by the department.

(dm) Each determination by a department head regarding the classification of a state employee as a protective occupation participant shall be reviewed by the office of state employment relations. A state employee's name may not be certified to the fund as a protective occupation participant under par. (d) until the office of state employment relations approves the determination.

(e) 1. An employee may appeal a determination under par. (d), including a determination that the employee is not a participating employee, to the board by filing a written appeal with the board. An appeal under this paragraph does not apply to any service ren-

dered more than 7 years prior to the date on which the appeal is received by the board. The board shall consider the appeal and mail a report of its decision to the employee and the participating employer or state agency.

3. A determination of an employee's status under par. (d) made after an appeal is decided under this paragraph shall remain in effect until receipt by the department of a notification indicating a classification for the employee different from the determination. The employee may appeal that subsequent determination by filing an appeal as required under this paragraph.

(em) The department may review any determination by a participating employer to classify an employee who is not a state employee as a protective occupation participant and may appeal the determination to the board by filing a written notice of appeal with the board. The determination by the employer shall remain in effect until the department receives a written notification from the board indicating a classification for the employee that is different from the employer's determination.

(2) (a) If any employer fails to transmit to the department any report required by law or by rule before the end of the calendar month following the date when the report is due, the department shall prepare the report and submit to the employer a statement of the expenses incurred in securing the report, including the value of the personal services rendered in its preparation. The department shall file duplicates of the statement with the department of administration.

(b) Within 30 days after the receipt of the statement under par. (a) by the employer the statement shall be audited as other claims against the employer are audited and shall be paid into the state treasury and credited to the appropriation under s. 20.515 (1) (w).

(c) If the employer defaults on payment of the amount specified in the statement under par. (a), the amount shall become a special charge against the employer and shall be included in the next certification of state taxes and charges and shall be collected, with interest as provided in sub. (3) from the date the statement was submitted to the employer, as other charges are certified and collected, or collected as provided under sub. (4). When the amount and the interest are collected, they shall be credited to the appropriation under s. 20.515 (1) (w).

(3) Interest shall be charged on accounts receivable from any employer if the remittance and any corresponding report are not received by the department in the manner and within the time limit fixed by rule or statute at the rate of 0.04% for each day, from the due date to the date received by the department with a minimum charge of \$3, and the interest or minimum charge shall be paid immediately to the department. If the amount is not paid within 30 days after it is payable, the amount shall be collected as provided under sub. (4).

(4) (a) Whenever any employer, other than the state, fails to pay to the department any amount due, the department shall certify the amount or the estimated amount to the department of administration which shall withhold the amount or the estimated amount from the next apportionment of state aids or taxes of any kind payable to the employer or, if so directed by the department, collect the amount as provided in sub. (2) (c) and shall pay the amount so withheld or collected to the department. When the exact amount due is determined and the department receives a sum in excess of the exact amount, the department shall pay the excess amount to the employer from whose aid the excess was withheld.

(b) Whenever any amount is payable by a department or agency of the state, the department shall certify the amount payable with an explanation of the charge, together with a voucher in payment for the amount to the department of administration which shall immediately approve the voucher and within no more than 5 days, notwithstanding s. 16.53 (10), make payment from the appropriation of the department or agency which failed to transmit the payment on time.

(5) Whenever it is determined that contributions and premiums were not paid in the year when due, the amount to be paid shall be determined at the employee and employer contribution or premium rates in effect when the payment should have been made and increased by interest at the effective rate which would have been credited if the amount had been paid and deposited in the accumulation reserves of the core annuity division under s. 40.04 (4) and (5) at the time the contributions or premiums were due. The employer shall collect from the employee the amount which the employee would have paid if the amounts had been paid when due, plus the corresponding interest, and shall transmit the amount collected to the department together with the balance of the amount to be paid, or the employer may elect to pay part or all of the employee amounts.

(6) Notwithstanding ss. 16.52 (2) and 40.02 (22) (a), fiscal year coding adjustments may be made for contributions received after August 1 for earnings paid for services rendered in the previous fiscal year, so that the amount of the contributions received and earnings paid are substantially reflected in the annual earnings period to which they apply.

(7) Within 30 days after receipt of a qualified domestic relations order or of a written request from the department pursuant to a qualified domestic relations order, a participating employer shall submit to the department a report, in the form specified by the department, of the earnings, service and contributions of the participant named in the order. The report shall include all earnings paid to and all service and contributions of the participant through the day before the decree date that have not previously been reported to the department.

History: 1981 c. 96, 386; 1983 a. 290, 368; 1987 a. 309; 1989 a. 13, 31, 166, 218; 1991 a. 152, 315; 1995 a. 27; 1999 a. 83; 2003 a. 33 ss. 1016, 9160; 2005 a. 153.

The statute of limitations under sub. (1) (e) 1. cannot be applied to extinguish pension rights established prior to its enactment without providing the plan participant with fair notice of the change and fair opportunity to preserve the claim. *Dicks v. Employee Trust Funds Board*, 202 Wis. 2d 703, 551 N.W.2d 845 (Ct. App. 1996), 95–1661.

40.07 Records. (1) Notwithstanding any other statutory provision, individual personal information in the records of the department is not a public record and shall not be disclosed except as provided in this section.

(1m) Individual personal information, other than medical records, may only be disclosed by the department under any of the following circumstances:

(a) The information is requested by the person whose record contains the information or by the duly authorized representative of the person;

(b) The information is requested by a public employee for use in the discharge of the employee's official duties;

(c) The information is required to be disclosed under a court order duly obtained upon a showing to the court that the information is relevant to a pending court action; or

(d) The information is required to be disclosed for the proper administration of the department or to assist in locating participants or beneficiaries the department is otherwise unable to contact.

(2) Medical records may be disclosed by the department only under any of the following circumstances:

(a) When a disability application or health insurance claim denial is appealed.

(b) Under a court order, or order of a hearing examiner, that is duly obtained upon prior notice to the department and a showing to the court or administrative tribunal that the information is relevant to a pending court or administrative action.

(c) Upon a written authorization that specifically identifies the medical records that may be disclosed, but only to the person who is the subject of the medical records or to the person's designee, except that this paragraph shall not apply to any medical records to which the person's access is otherwise prohibited by law.

(2m) Medical information gathered for any one of the benefit plans established under this chapter may be used by any other benefit plan established under this chapter.

(3) The department shall not furnish lists of participants, annuitants or beneficiaries to any person or organization except as required for the proper administration of the department.

History: 1981 c. 96; 2005 a. 152.

40.08 Benefit assignments and corrections.

(1) EXEMPTIONS. The benefits payable to, or other rights and interests of, any member, beneficiary or distributee of any estate under any of the benefit plans administered by the department, including insurance payments, shall be exempt from any tax levied by the state or any subdivision of the state and shall not be assignable, either in law or equity, or be subject to execution, levy, attachment, garnishment or other legal process except as specifically provided in this section; except that, notwithstanding s. 40.01 (2), the department of revenue may attach benefit payments to satisfy delinquent tax obligations. The board and any member or agent thereof and the department and any employee or agent thereof are immune from civil liability for any act or omission while performing official duties relating to withholding any annuity payment under this subsection. The exemption from taxation under this section shall not apply with respect to any tax on income.

(1c) WITHHOLDING OF ANNUITY PAYMENTS. Notwithstanding sub. (1), any monthly annuity paid under s. 40.23, 40.24, 40.25 (1) or (2), or 40.63 is subject to s. 767.75. The board and any member or agent thereof and the department and any employee or agent thereof are immune from civil liability for any act or omission while performing official duties relating to withholding any annuity payment pursuant to s. 767.57.

(1g) WITHHOLDING OF LUMP SUM PAYMENTS. Notwithstanding sub. (1), any lump sum payment made under s. 40.23, 40.24, 40.25 (1) or (2), or 40.63 is subject to s. 49.852. The board and any member or agent thereof and the department and any employee or agent thereof are immune from civil liability for any act or omission while performing official duties relating to withholding any lump sum payment pursuant to s. 49.852.

(1m) DIVISION OF BENEFITS. (a) Notwithstanding sub. (1), a participant's accumulated rights and benefits under the Wisconsin retirement system shall be divided pursuant to a qualified domestic relations order only if the order provides for a division as specified in this subsection.

(b) The creditable service and the value of the participant's account that are subject to division on the decree date shall be equal to one of the following:

1. The creditable service and the dollar amounts credited to all parts of the participant's account through the day before the decree date, if the participant is not an annuitant on the decree date.

2. The present value of the annuity being paid if the participant is an annuitant.

(c) The present value of the annuity specified in par. (b) 2. shall be computed in accordance with the actuarial tables then in effect and shall consider the number of remaining guaranteed payments, if any. If the participant is an annuitant who is not receiving an annuity from all parts of the participant's accounts, then par. (b) 1. applies to those parts of the account from which the annuity is not being received.

(d) The amount computed under par. (b) shall be divided between the participant and the alternate payee in the percentages specified in the qualified domestic relations order. The participant shall have no further right, interest or claim on that portion of the participant's creditable service and account balances or annuity amount allocated to the alternate payee.

(e) The alternate payee share of the amount computed under par. (b) shall be distributed to the alternate payee or, in the case of

an individual adjudged mentally incompetent, to a named guardian under sub. (9), as follows:

1. The creditable service and amounts computed under par. (b) 1. shall be transferred to a separate account in the name of the alternate payee.

2. Except as provided in subds. 3. and 4., the control and ownership rights of the alternate payee over his or her share of the account shall be the same as if the alternate payee were a participant who had ceased to be a participating employee but had not applied for a benefit under s. 40.23 or 40.25 on the decree date or the date that the participant terminated covered employment, whichever is earlier.

3. If par. (b) 1. applies and the effective date of the alternate payee's benefit is after the date that the participant would have met the age requirement for a retirement annuity under s. 40.23, the benefits for the alternate payee shall be determined under s. 40.23. The alternate payee's benefits shall be computed using the participant's final average earnings on the first day of the annual earnings period in which the alternate payee's annuity is effective. If the effective date of the alternate payee's benefit is before the date that the participant would have met the age requirement for a retirement annuity under s. 40.23, the alternate payee's benefits shall be determined under s. 40.25 (2).

4. An alternate payee, who elects an annuity option, may only elect among the options under s. 40.24 that provide payments that are calculated only on the basis of the age of the alternate payee.

(f) After division of the participant's account under par. (b), the account and any benefits payable shall be adjusted as follows:

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.

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. 40.26 (2) after the decree date, the memorandum account created under s. 40.26 (2) (b) shall be adjusted by the total of the alternate payee share computed under this subdivision. 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.

3. 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 receives a qualified domestic relations order after May 2, 1998, the division of benefits may not apply to any benefits paid to the participant before the date on which the department receives the qualified domestic relations order.

(g) If par. (b) 1. applies, eligibility for benefit rights that are available only after attainment of a specified length of service shall be determined based on the service that would have been credited, if the account had not been divided under this subsection, to the participant's account on the effective date of the participant's benefit and on the effective date of the alternate payee's benefit for purposes of determining the participant's and alternate payee's benefit rights, respectively. However, no creditable service may be added to the alternate payee's account under this paragraph, and the participant shall not receive creditable service under this paragraph, for any service that has been transferred to the alternate payee's account. This paragraph applies only if all eligibility requirements, other than length-of-service requirements, for the benefit rights being established have been met.

(h) Notwithstanding pars. (b) to (g), if the participant is both an annuitant and is receiving a benefit under s. 40.65 that is effective on or before the decree date, the adjustments specified in s. 40.65 (5) (b) 4. shall be computed as though the participant's account had not been divided.

(i) The department, its employees, the fund and the board are immune from any liability for any act or omission under this subsection in accordance with a qualified domestic relations order and may not be required to take any action or make any notification as part of the exercise of ownership rights granted under this subsection.

(j) This subsection applies to qualified domestic relations orders issued on or after January 1, 1982, that provide for divisions of the accumulated rights and benefits of participants whose marriages have been terminated by a court on or after January 1, 1982.

(k) 1. Nothing in this subsection authorizes a court to revise or modify a judgment or order with respect to a final division of property under s. 767.61, in contravention of s. 767.59 (1c) (b).

2. Notwithstanding subd. 1., a court may revise or modify a judgment or order specified under subd. 1. for participants whose marriages were terminated by a court on or after January 1, 1982, and before April 28, 1990, but only with respect to providing for payment in accordance with a qualified domestic relations order of benefits under the Wisconsin retirement system that are already divided under the judgment or order.

(2) **INSURANCE PREMIUMS.** Insurance premiums shall be deducted from annuities for group insurance benefit plans as provided in s. 40.05 and, with the written consent of the annuitant, for premiums for group life and health insurance plans provided by the city of Milwaukee to former Milwaukee teachers if the annuity is sufficient.

(3) **WAIVERS.** Any participant, beneficiary or distributee of any estate may waive, absolutely and without right of reconsideration or recovery, the right to or the payment of all or any portion of any benefit payable or to become payable under this chapter. The waiver shall be effective on the first day of the 2nd month commencing after it is received by the department or on the date specified in the waiver if later.

(4) **RETENTION OF PAYMENTS.** Unless voluntarily repaid and except as limited by sub. (10), the department may retain out of any annuity or benefit an amount as the department in its discretion may determine, for the purpose of reimbursing the appropriate benefit plan accounts for a balance due under s. 40.25 (5) or for any money paid, plus interest at the effective rate of the core annuity division, to any person or estate, through misrepresentation, fraud, or error. Upon the request of the department any employer shall withhold from any sum payable by the employer to any person or estate and remit to the department any amount, plus interest at the effective rate of the core annuity division, which the department paid to the person or estate through misrepresentation, fraud, or error. Any amount, plus interest at the effective rate, not recovered by the department from the employer may be procured by the department by action brought against the person or estate.

(5) **EMPLOYER ERROR.** (a) Whenever any sum becomes due to the department from any recipient as the result of incorrect or incomplete reporting by an employer and the sum cannot be recovered from the recipient, then the employer shall be charged with the sum.

(b) Any amount determined to be due under this subsection shall be due with the next payment by the employer under s. 40.06 and shall be subject to the penalties and collection procedures provided in s. 40.06 if not paid when due.

(6) **REFUNDS.** (a) Notwithstanding s. 20.913, but subject to par. (b), the department may refund any money paid in error to the fund by or on behalf of a person who is not a participant.

(b) The department may not refund any money paid into the fund by an employer, but shall by rule credit the money to the employer.

(c) Except as provided in par. (d), money paid into the fund by an employer on behalf of a participant which exceeds the contribution limits under s. 40.32 may not be refunded to the employer, but the department shall by rule credit the money to the employer and the employer shall pay the participant the amount of the credit as additional wages or salary.

(d) Money paid into the fund by a participant which exceeds the contribution limits under s. 40.32 may be refunded directly to the participant if the department determines that the money was paid on an after-tax basis.

(e) No interest may be credited to any money refunded under this subsection.

(7) **OVERPAYMENTS AND UNDERPAYMENTS.** (a) Any overpayment or underpayment of a lump-sum payment under s. 40.25 or a death benefit which is less than 60% of the amount specified in s. 40.25 (1) (a) rounded to the next highest dollar amount, and any annuity payment error which is less than \$2 per month may not be corrected but shall be credited or debited to the employer accumulation reserve or the appropriate insurance account. However, if the amount of unapplied additional contributions would increase an annuity payment by less than \$2 but is more than 60% of the amount specified in s. 40.25 (1) (a) rounded to the next highest dollar amount, the unapplied additional contributions shall be paid to the annuitant as a lump sum.

(b) Any overpayment exceeding the limits in par. (a) to a person who cannot be located or which proves to be uncollectible and any underpayment exceeding the limits in par. (a) to a person who cannot be located may be written off 2 years after the underpayment or overpayment is discovered and credited or debited to the employer accumulation reserve or the appropriate insurance account.

(c) If an annuity underpayment exceeding the limits in par. (a) has not been corrected for at least 12 months, the payment to the annuitant to correct the underpayment shall include 0.4% interest on the amount of the underpayment for each full month during the period beginning on the date on which the underpayment occurred and ending on the date on which the underpayment is corrected.

(8) **ABANDONMENT.** (a) Benefits provided under this chapter shall be considered abandoned as follows:

1. Any potential primary beneficiary under s. 40.02 (8), other than an estate, who has not applied for any benefit payable under this chapter as a result of the death of the participant and whom the department cannot locate by reasonable efforts, as determined by the department by rule, within one year after the death of the participant shall be presumed to have predeceased the participant and all other potential beneficiaries. Thereafter, if the department is unable to locate any resulting subsequent beneficiary within 6 months, all beneficiaries under s. 40.02 (8) (a) 1. and 2. shall be presumed to have predeceased the participant and the department shall pay all benefits payable under this chapter as a result of the death of the participant to the participant's estate in a lump sum.

2. If an estate that is determined by the department to be a beneficiary is closed prior to the payment of benefits payable

under this chapter as a result of the death of the participant and the estate is not reopened within 6 months after the department notifies the estate that a benefit is payable, the benefit shall be considered irrevocably abandoned and shall be transferred to the employer accumulation reserve, unless the estate was the designated beneficiary under s. 40.02 (8) (a) 1.

2m. If the estate was the designated beneficiary under s. 40.02 (8) (a) 1. and the estate is closed prior to the payment of benefits payable under this chapter as a result of death of the participant and the estate is not reopened within 6 months after the department notifies the estate that a benefit is payable, the department shall pay the benefit to a beneficiary as determined under s. 40.02 (8) (a) 2. If the department is unable to locate any such beneficiary within 6 months, all such beneficiaries shall be presumed to have predeceased the participant and the benefit shall be considered irrevocably abandoned and shall be transferred to the employer accumulation reserve.

3. A participant, other than a participating employee or annuitant, whom the department cannot locate by reasonable efforts, with such efforts beginning by the end of the month in which the participant attains, or would have attained, the age of 65, shall be considered to have abandoned all benefits under the Wisconsin retirement system on the date on which the participant attains, or would have attained, the age of 70. The department shall close the participant's account and shall transfer the moneys in the account to the employer accumulation reserve. The department shall restore the participant's account and shall debit the employer accumulation reserve accordingly if the participant subsequently applies for retirement benefits under this chapter before attaining the age of 80.

4. The former spouse of a participant who is an alternate payee and whom the department cannot locate by reasonable efforts, with such efforts beginning by the end of the month in which the participant attains, or would have attained, the age of 65, shall be considered to have abandoned all benefits under the Wisconsin retirement system on the date on which the participant attains, or would have attained, the age of 70. The department shall close the alternate payee's account and shall transfer the moneys in the account to the employer accumulation reserve. The department shall restore the alternate payee's account and shall debit the employer accumulation reserve accordingly if the alternate payee subsequently applies for retirement benefits under this chapter before the participant attains or would have attained the age of 80.

5. All presumptions under this paragraph are conclusive upon payment of the benefit payable under this chapter as a result of the death of the participant to any qualifying person, estate or entity other than the employer accumulation reserve.

(b) All moneys or credits in an account for a person presumed to have died intestate, without heirs or beneficiary, or to be abandoned by the person under par. (a) shall be applied, at the end of the 5th calendar year in which notice is published under par. (c), to the employer accumulation reserve to reduce future funding requirements.

(c) The department shall publish a class 1 notice, under ch. 985, in the official state paper stating the names of persons presumed to have died intestate, without heirs or beneficiary, or whose accounts are presumed to be abandoned under par. (a), and the fact that a benefit will be paid, if applied for within the time limits under par. (a) and if the participant, alternate payee or other person offers proof satisfactory to the department that the participant, alternate payee or other person is entitled to the benefit. Such proof shall include, but is not limited to, evidence that the participant died and that the person is the beneficiary under s. 40.02 (8).

(d) If any person files a claim within 10 full calendar years after the publication of the notice under par. (c) and furnishes proof of ownership of any amounts in an inactive account the claim shall be paid on the same basis as if no action had been taken under this

section. The cost of the benefit shall be charged to the employer account credited under par. (b).

(e) Notwithstanding any other provision of the statutes any account subject to this subsection may, at the discretion of the department, be settled by any heirs of a deceased participant or beneficiary making application, on a form approved by the department, certifying the names of any other persons not known by the applicants to be deceased and known by the applicants to have an equal or superior claim to the account and certifying that the applicants have no knowledge of the whereabouts of any of the persons so named.

(f) Publication under par. (c) is not required if the present value of the benefit to which a person would have been entitled on attainment of age 70 is less than \$100, in the calendar year of 1982 or, in each calendar year commencing after January 1, 1982, the applicable amount under this paragraph for the previous calendar year increased by the salary index for that year and ignoring any fraction of a dollar. The provisions of this subsection apply to inactive accounts subject to this paragraph as if publication had been made in the year the person would have attained age 70.

(9) PAYMENTS OF BENEFITS TO MINORS AND INDIVIDUALS FOUND INCOMPETENT. In any case in which a benefit amount becomes payable to a minor or to an individual adjudicated incompetent, the department may waive guardianship proceedings, and pay the benefit to the person providing for or caring for the minor, or to the spouse, parent, or other relative by blood or adoption providing for or caring for the individual adjudicated incompetent.

(9m) GUARDIANS. An application for a benefit, a designation of a beneficiary or any other document which has a long-term effect on a person's rights and benefits under this chapter and which requires a signature may be signed and filed by a guardian of the estate when accompanied by a photocopy or facsimile of an order of guardianship issued by a circuit court judge or a register in probate or a circuit court commissioner who is assigned the authority to issue such orders under s. 851.73 (1) (g).

(10) LIMITATIONS ON CORRECTIONS. Service credits granted and contribution, premium and benefit payments made under this chapter are not subject to correction unless correction is requested or made prior to the end of 7 full calendar years after the date of the alleged error or January 1, 1987, whichever is later, unless the alleged error is the result of fraud or unless another limitation is specifically provided by statute. This subsection does not prohibit correction of purely clerical errors in reporting or recording contributions, service and earnings.

(11) ASSUMED CONSENT. The department, its employees, the fund, the employee trust fund board, the group insurance board and the deferred compensation board are held free from any liability for any money retained or paid in accordance with this section and the employee, participant or beneficiary shall be assumed to have assented and agreed to any disposition under this section of the money due.

(12) COURT REVIEW. Notwithstanding s. 227.52, any action, decision or determination of the board, the Wisconsin retirement board, the teachers retirement board, the group insurance board or the deferred compensation board in an administrative proceeding shall be reviewable only by an action for certiorari in the circuit court for Dane County that is commenced by any party to the administrative proceeding, including the department, within 30 days after the date on which notice of the action, decision or determination is mailed to that party, and any party to the certiorari proceedings may appeal the decision of that court.

(13) BENEFICIARY DESIGNATION. The department may not be required by a court order, or by any other action or proceeding, to enforce or otherwise monitor the beneficiary designation specified in a qualified domestic relations order.

(14) ROLLOVERS TO OTHER RETIREMENT PLANS. If a participant who is entitled to receive a lump sum payment or a monthly annuity certain under s. 40.24 (1) (f) for which the participant has specified a term of less than 120 months or an annuity certain of less

than 10 years in duration from the Wisconsin retirement system and who has an account established under any other retirement plan located in the United States so directs in writing, on a form prescribed by the department, the department shall pay the lump sum payment or the monthly annuity directly to the participant's account under that other retirement plan for credit under that other retirement plan. The department shall cease payment of the monthly annuity payments to the annuitant's account under the other retirement plan within 30 days of the written request of the annuitant or written notice of the annuitant's death.

History: 1981 c. 96, 391; 1983 a. 290; 1985 a. 182 s. 57; 1987 a. 309; 1989 a. 31, 218; 1991 a. 141, 152; 1995 a. 302, 414; 1997 a. 35, 110, 125, 191, 237; 1999 a. 162; 2001 a. 61; 2003 a. 320; 2005 a. 153, 387; 2005 a. 443 s. 265.

Cross Reference: See also s. [ETF 52.20](#), Wis. adm. code.

The limitation period under sub. (10) runs from the date on which benefits are calculated and paid to a plan participant. *Benson v. Gates*, 188 Wis. 2d 389, 525 N.W.2d 278 (Ct. App. 1994).

Whatever effect the Marital Property Act, ch. 766, may have with respect to property rights between spouses, it has no effect on the Board's determination of a beneficiary under ch. 40. *Jackson v. Employee Trust Funds Board*, 230 Wis. 2d 677, 602 N.W.2d 543 (Ct. App. 1999), 98–3063.

The board's consistent interpretation of "Mr. & Mrs." beneficiary designations as relating to the identity of the beneficiary on the date of the designation was reasonable. *Jackson v. Employee Trust Funds Board*, 230 Wis. 2d 677, 602 N.W.2d 543 (Ct. App. 1999), 98–3063.

Sub. (1) does not permit the division of a deferred compensation account pursuant to a qualified domestic relations order. *Preiss v. Preiss*, 2000 WI App 185, 238 Wis. 2d 368, 617 N.W.2d 514, 99–3261.

An appeal to the board was an inadequate remedy under the facts of the case because the board does not have the statutory authority to award interest on delayed benefit payments based either on a claim of unjust enrichment or a takings claim under Art. I, s. 13. The doctrine of exhaustion of administrative remedies did not require an appeal of the department's dismissal of the claim to the board before filing a court action. *Fazio v. Department of Employee Trust Funds*, 2002 WI App 127, 255 Wis. 2d 801, 645 N.W.2d 618, 01–2595.

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40.19 Rights preserved. (1) Rights exercised and benefits accrued to an employee under this chapter for service rendered shall be due as a contractual right and shall not be abrogated by any subsequent legislative act. The right of the state to amend or repeal, by enactment of statutory changes, all or any part of this chapter at any time, however, is reserved by the state and there shall be no right to further accrual of benefits nor to future exercise of rights for service rendered after the effective date of any amendment or repeal deleting the statutory authorization for the benefits or rights. This section shall not be interpreted as preventing the state from requiring forfeiture of specific rights and benefits as a condition for receiving subsequently enacted rights and benefits of equal or greater value to the participant.

(2) Any person, or if the person dies prior to applying for a benefit then any beneficiary of that person, who is a participant in the Wisconsin retirement fund or a member of either the state teachers retirement system or the Milwaukee teachers retirement fund on the day prior to January 1, 1982, and who becomes a participating employee in the Wisconsin retirement system may request, prior to application for any benefit from the system, that the amount of and eligibility for benefits from the Wisconsin retirement system be determined in accord with the laws in effect on that date but the election shall be totally in lieu of any benefit amount or eligibility provided by this act or any subsequent act.

(2m) Any person who is a participant in the Wisconsin retirement system before March 9, 1984, and who is not subsequently a participating employee in the Wisconsin retirement system shall continue to have the amount of, and eligibility for, the person's benefits determined in accordance with the statutes in effect on the date the person terminated as a participating employee in the Wisconsin retirement system, but the form of payment, processing procedures and accounting controls shall be determined in accordance with this chapter.

(3) Any person who is a participant in the Wisconsin retirement fund or a member of either the state teachers retirement system or the Milwaukee teachers retirement fund prior to January 1, 1982, and who does not subsequently become a participating employee in the Wisconsin retirement system, shall continue, except as provided in s. [40.08 \(8\)](#), to have the amount of and eligibility for the person's benefits determined in accord with the statutes in effect on the date the person terminated as a participating employee in the Wisconsin retirement fund or as an active member of the state teachers retirement system or Milwaukee teachers retirement fund, but the form of payment, processing procedures and accounting controls shall be determined in accord with this chapter.

(4) (a) The department shall assume, and be responsible for, all authority previously exercised by village or city officials relative to pension funds and benefits provided under s. [61.65](#), 1975 stats., and s. [62.13 \(9\)](#), (9a) and (10), 1975 stats., except the governing body of the employer shall exercise the authority provided under the first sentence of s. [62.13 \(9\) \(c\) 3.](#), 1975 stats.

(b) The liabilities of each pension fund terminated by [chapter 182, laws of 1977](#), shall be accounted for and paid by the Wisconsin retirement system in accord with procedures set forth in this subsection.

(c) Each employee subject to par. [\(g\)](#) shall make contributions to the Wisconsin retirement system in an amount equal to 4% of salary.

(d) Each employer affected by this subsection shall reimburse the Wisconsin retirement system for all payments made under par. [\(f\)](#) or [\(g\)](#) as a result of employment with that employer. Payments made under s. [40.27](#) are not included as payments for which the Wisconsin retirement system is to be reimbursed. The reimbursements due from the employer under this paragraph shall be offset by application of contributions made under par. [\(c\)](#), applied by the department at times determined by it, and by any contributions made under s. [41.60 \(2\) \(a\) 1. and 2.](#), 1977 stats., which have not been applied prior to January 1, 1982.

(e) All amounts due under this subsection shall be paid in accordance with procedures established by the department.

(f) Each benefit being paid under s. [61.65](#), 1975 stats., or s. [62.13 \(9\)](#), (9a) or (10), 1975 stats., on March 30, 1978, shall be continued in full force and effect, on the terms and conditions under which the benefit was originally granted, regardless of whether the granting was in accordance with the law then in effect, but after January 1, 1982 each benefit shall be paid by the Wisconsin retirement system and if all or a portion of the benefit was in accord with the law then in effect, that portion of the benefit shall be subject to s. [40.27 \(1\)](#). No supplemental benefit shall be paid under s. [40.27 \(1\)](#) with respect to any portion of a benefit which was not granted in accordance with the law then in effect.

(g) After January 1, 1982, each member of a pension fund created under s. [61.65](#), 1975 stats., or s. [62.13 \(9\)](#), (9a) or (10), 1975 stats., who was an actively employed member of that fund on March 30, 1978, shall continue to have benefits and obligations determined in accordance with the applicable provisions of s. [61.65](#), 1975 stats., or s. [62.13 \(9\)](#), (9a) or (10), 1975 stats., but paid by the Wisconsin retirement system, except that for any member whose employment terminates after March 9, 1984, the monthly pension shall equal 55% of the member's monthly compensation. The provisions of s. [40.23 \(1\) \(f\)](#) relating to compulsory retirement shall not apply to those actively employed members.

(h) This subsection does not apply to any pension fund operated by a 1st class city in accordance with s. [62.13 \(10\) \(h\)](#), 1975 stats.

History: 1981 c. 96; 1983 a. 141; 1987 a. 403 s. 256; 1989 a. 56, 359; 1997 a. 26.

All participants who have benefits accrued are protected by sub. (1) from the abrogation of those benefits unless the benefits are replaced by benefits of equal or greater value. Statutory changes to ch. 40 may be made as long as accrued benefits are not abrogated. Nonstatutory distributions made by 1999 Wis. Act 11 did not abrogate accrued benefits nor did they violate the constitutional protections against the taking of property or impairment of contract. Wisconsin Professional Police Association, Inc. v. Lightbourn, 2001 WI 59, 243 Wis. 2d 512, 627 N.W.2d 80, 99–3297.

SUBCHAPTER II

WISCONSIN RETIREMENT SYSTEM

40.20 Creation. A Wisconsin retirement system is created, including the benefits provided by this subchapter, the disability annuities provided by s. 40.63 and the death benefits provided by ss. 40.71 and 40.73. For purposes of determining an employee's eligibility for social security coverage only, the former state teachers retirement system and Milwaukee teachers retirement fund and the local police and fire pension funds established under s. 61.65 (1), (6) and (7), 1975 stats., and s. 62.13 (9) (e), (9a) and (10) (f) and (g), 1975 stats., shall continue to be considered separate retirement systems but for all other purposes the Wisconsin retirement system is a continuation of the Wisconsin retirement fund.

History: 1981 c. 96; 1987 a. 403 s. 256.

40.21 Participating employers. (1) Any employer shall be included within and thereafter subject to the provisions of the Wisconsin retirement system by so electing, through adoption of a resolution by the governing body of the employer. If the official notice of election to be included has been received by the department on or before November 15 the effective date of participation of the employer shall be the ensuing January 1. If the department receives the notice of election after November 15 the effective date shall be the January 1 after the ensuing January 1.

(1m) Notwithstanding sub. (1), if the governing body of a federated public library system, established under s. 43.19, whose territory lies within a single county with a population of 500,000 or more adopts a resolution to become a participating employer, the effective date shall be June 1, 1994.

(2) Any employer who elected or was required to participate in the Wisconsin retirement fund under s. 41.05, 1979 stats., shall be included in the Wisconsin retirement system on the same basis as the employer was included in the Wisconsin retirement fund.

(3) Every employer authorized by law to employ or pay the salaries of teachers, who is not otherwise a participating employer, is a participating employer with respect to teacher employees only.

(3m) A city–county health department that is established under s. 251.02 (1m), that is subject to s. 251.02 (1r), and that is not otherwise a participating employer, is a participating employer with respect to its employees who are included in a collective bargaining unit for which a representative is recognized or certified under subch. IV of ch. 111 and is not required to adopt a resolution electing to participate in the Wisconsin retirement system or provide notice of such election to the department under sub. (1).

(4) Every city or village which was subject to s. 61.65, 1975 stats., and s. 62.13, 1975 stats., on or before March 30, 1978, except a city of the 1st class, which is not otherwise a participating employer, is a participating employer but only with respect to present and future employees of its police and fire departments specified by s. 61.65 (6) and (7), 1975 stats., and s. 62.13 (9) (e), (9a) and (10) (f) and (g), 1975 stats.

(5) Whenever any employer is created, the territory of which includes more than one–half of the last assessed valuation of an employer which at the time of creation was a participating employer on a basis other than that specified in sub. (3) or (4) and the employer so created assumes the functions and responsibilities of the previous employer with respect to the territory, then the employer so created shall automatically be a participating employer from its inception, but no prior service credits shall be

provided for any personnel of the employer unless the new participating employer adopts a resolution as provided in sub. (1). If a resolution is adopted, no employee shall receive prior service credit for any period of service which was previously covered by a retirement system.

(6) (a) Any employer electing to be included within the provisions of the Wisconsin retirement system in accordance with this section may in the resolution and in the certified notice of election recognize 100%, 75%, 50%, 25% or none of the prior creditable service of its employees earned by the employees while employed by the employer, if the same percentage of each employee's prior creditable service is recognized.

(b) Any employer which recognizes less than all of the prior creditable service of its employees under par. (a) may adopt another resolution as provided in this section, increasing, for each person who is still a participating employee on the effective date of the increase determined under this section, the percentage of the employee's prior creditable service which is recognized to one of the higher levels provided by par. (a) provided the accumulated percentage does not exceed 100%.

(c) Whenever the percentage of recognized prior creditable service is increased as provided in par. (b), the employer contributions computed under s. 40.05 (2) shall be increased to reflect the value of the increased prior creditable service being granted, amortized over the remainder of the funding period provided for prior creditable service costs of that employer.

History: 1981 c. 96; 1987 a. 309; 1987 a. 403 s. 256; 1989 a. 56 s. 259; 1993 a. 383; 2001 a. 16.

Sub. (4) limits prospective mandatory Wisconsin Retirement System coverage to present and future police and firefighter employees of cities and villages that had police and firefighter employees included in the Wisconsin Retirement Fund prior to March 31, 1978. 75 Atty. Gen. 34.

40.22 Participating employees. (1) Except as provided in sub. (2), each employee currently in the service of, and receiving earnings from, a state agency or other participating employer shall be included within the provisions of the Wisconsin retirement system as a participating employee of that state agency or participating employer.

(2) No person may be included within, or receive benefits from, the Wisconsin retirement system for any service if any of the following conditions apply:

(a) Except as provided in sub. (2m), the employee is not expected to work at least one–third of what is considered full–time employment by the department, as determined by rule.

(b) The employee's expected duration of employment is less than one year.

(c) The employee is excluded from participation by s. 40.21 (3) or (4).

(d) The employee is subject to s. 40.19 (4) provided that contributions and benefits shall be paid as provided by that subsection.

(e) The employee is subject to a contract involving the furnishing by the person of more than the person's personal services.

(f) The employee is a member of a retirement system of a 1st class city and was an employee of a technical college district created under ch. 38 on the date the district was created.

(g) The employee is appointed by the university under s. 36.19, or by the University of Wisconsin Hospitals and Clinics Authority, as a student assistant or employee in training or is appointed by a school or other education system in which the person is regularly enrolled as a student and is attending classes to perform services incidental to the person's course of study at that school or education system.

(gm) The employee is initially employed by a participating employer on or after April 23, 1992, is under the age of 20 and is regularly enrolled, or is expected to be regularly enrolled, as a full–time student in a school, as defined in s. 118.257 (1) (d).

(h) The employee is teaching while on leave from an educational institution not a part of the University of Wisconsin System,

if the person is a visiting professor, visiting associate professor, visiting assistant professor or visiting lecturer at the university and if the employment at the university is all within 12 consecutive calendar months. If the employment at the university is continued beyond the 12–month period the person shall, at the start of the 13th consecutive calendar month of employment, come under the system for future service.

(i) The employee contributes to the employee retirement system of the county of Milwaukee if the person was contributing to that system on September 10, 1959.

(j) The employee is employed by a transportation system in a position that is excluded from the Wisconsin retirement system and is included in another retirement system under s. 66.1023.

(k) The employee is eligible to receive similar benefits from any other state covering the same service and earnings.

(L) The employee is employed by a participating employer after the person becomes an annuitant, unless the service is after the annuity is terminated under s. 40.26.

(2m) An employee who is not expected to work at least one-third of what is considered full-time employment by the department, as determined by rule, and who is not otherwise excluded under sub. (2) from becoming a participating employee shall become a participating employee if he or she is subsequently employed by the state agency or other participating employer for either of the following periods:

(a) At least one year for at least one-third of what is considered full-time employment by the department, as determined by rule.

(b) At least 600 hours in the immediately preceding 12–month period.

(3) A person who qualifies as a participating employee shall be included within, and shall be subject to, the Wisconsin retirement system effective on one of the following dates:

(a) The employer's effective date of participation if the person is an employee of that employer on the employer's effective date and has met all requirements for inclusion on or prior to that effective date.

(b) The first day after completion of one year of employment for at least one-third of what is considered full-time employment by the department, as determined by rule, if the person becomes a participating employee under sub. (2m) after the employer's effective date of participation.

(c) The first day of employment if the person is a participating employee not covered under par. (a) or (b).

(3m) Any employee who becomes a participating employee shall continue to be a participating employee notwithstanding sub. (2) (a) or (b) for periods of subsequent employment with that state agency or other participating employer unless the employment with the state agency or other participating employer is terminated for 12 or more consecutive calendar months or unless the employee receives a benefit under s. 40.23, 40.25 (1) or (2) or 40.63.

(4) For purposes of s. 40.02 (25), a person who is employed by a state agency shall be deemed to have become a state employee on the date the person becomes a participating state employee. No participating employee may be included under s. 40.52 (3).

(5) A determination as to whether an employee has met or will meet the actual or anticipated performance of duty or other requirements of this section shall be made by the employer in accordance with rules of the department. The department may by rule identify circumstances and establish procedures under which eligibility for participation shall be based on combined employment when a person is employed by 2 or more employers.

(6) Notwithstanding subs. (1), (2), (3), (4) and (5), if an employee's employment with an employer terminates after a period of service of less than 30 calendar days, the employee is not eligible for retirement coverage for that period of service. This subsection shall not apply to employment covered under sub.

(3m) and shall not affect an employee's eligibility for insurance coverage for that period of service.

History: 1981 c. 96, 386; 1989 a. 13; 1991 a. 152; 1993 a. 399; 1995 a. 216; 1997 a. 69, 110; 1999 a. 150 s. 672; 2001 a. 104.

40.23 Retirement annuities. (1) (a) Except as provided in par. (am), any participant who has attained age 55, and any protective occupation participant who has attained age 50, on or before the annuity effective date shall be entitled to a retirement annuity in accordance with the actuarial tables in effect on the effective date of the annuity if the participant submits an application for a retirement annuity on a form furnished by the department and all of the following apply:

1. The participant is separated, regardless of cause, and continues to be separated until the annuity effective date, the date 30 days after the application is received by the department or the date 30 days after separation, whichever is later, from all employment meeting the qualifications for inclusion specified in s. 40.22 for any participating employer.

2. The participant is not on authorized leave of absence from any participating employer.

(am) 1. In this paragraph "part-time service" is service in a position normally requiring actual performance of duty during fewer than 1,044 hours per calendar year.

2. Any participant who has attained age 55 and who is a participant because of employment other than part-time service as an elected official and who is also a participating employee because of part-time service as an elected official may, after termination of all covered employment other than service as a part-time elected official, waive further participation under the fund for his or her current, and any future, part-time service as an elected official. Any election under this paragraph is irrevocable and is effective beginning the day after the date of election. Notwithstanding par. (a), any participant who elects under this paragraph may receive a retirement annuity for all service under the fund credited to the participant to the date he or she elects. The date a participant elects under this paragraph is deemed to be the date of separation from the last participating employer by which that participant was employed.

3. No participant who elects under subd. 2. may have his or her annuity terminated under s. 40.26 (1) because of earnings received for any part-time services as an elected official.

(b) Except as provided in par. (bm), all retirement annuities shall be effective on the day following, or on the first day of a month following, the date of separation from the last participating employer by which the participant was employed, as specified by the participant in the written application for the annuity. However, the date shall not be more than 90 days prior to the date of receipt of the application by the department. The participant may specify that additional contribution accumulations shall not be applied to provide an annuity until a subsequent application is filed for an annuity to be paid from the additional contribution accumulations. The subsequent application shall be made as specified under sub. (4) or the department shall automatically distribute the accumulated additional contribution accumulations as a lump sum.

(bm) If an application by a participant age 55 or over, or by a protective occupation participant age 50 or over, for long-term disability insurance benefits is disapproved under rules promulgated by the department, the date which would have been the effective date for the insurance benefits shall be the retirement annuity effective date if requested by the applicant within 60 days of the disapproval or, if the disapproval is appealed, within 60 days of the final disposition of the appeal.

(c) No application specifying an annuity effective date later than 60 days after the date of its receipt by the department shall be accepted, unless the participant files the application on or after January 1 of the calendar year in which the participant attains the age of 69.5 years specifying an annuity effective date that begins before April 1 of the calendar year following the calendar year in which the participant attains the age of 70.5 years.

(d) Notwithstanding par. (c), an application for an annuity to be effective on the day following termination of employment may be filed up to 90 days prior to the employee's anticipated termination date. The anticipated termination date shall be stated in the application and the department shall not make an annuity payment until the employee has terminated. The department shall reject any application that is filed more than 90 days prior to the employee's termination date.

(e) Whenever it is determined that an annuity effective date is incorrect, the annuity effective date shall be corrected and any related computational and payment adjustments shall be made.

(f) Any participating employee may be retired by the employer after attainment of the employee's normal retirement date, under policies established or agreed to by the employer, except:

1. As prohibited by federal law or by s. 111.33.

2. Each elected official's and each sheriff's employment shall be continued to the end of the official's or sheriff's term of office and to the end of each subsequent term of office to which elected.

4. Any employer may, in a collective bargaining agreement, limit its right to require retirement.

(2) Except as provided in ss. 40.19 (2) and 40.26, this subsection applies only to participants who are not participating employees after March 9, 1984. The retirement annuity in the normal form shall be an annuity payable for the life of the annuitant with a guarantee of 60 monthly payments. Except as provided in sub. (3) and s. 40.26, the initial monthly amount of the normal form annuity shall be the amount which, when added to the OASDHI benefit, equals 85% of the participant's final average earnings plus the amount which can be provided under pars. (a) and (c) and adjusted under pars. (d) and (e) or, if less, shall be in the monthly amount equal to the sum of the amounts determined under pars. (a), (b) and (c) as modified by pars. (d) and (e) and in accordance with the actuarial tables in effect on the annuity effective date.

(a) The annuity which can be provided from a sum equal to 200% of the excess accruing after June 30, 1966, for teacher participants, or December 31, 1965, for all other participants, of the participant's required contribution accumulation reserved for a variable annuity over the amount to which the contributions would have accumulated if not so reserved. If the participant's required contribution accumulation reserved for a variable annuity is less than the amount to which the contributions would have accumulated if not so reserved, the annuity shall be reduced by the amount which could be provided by a sum equal to 200% of the deficiency.

(b) A monthly annuity in the normal form computed on the basis of the participant's final average earnings and creditable service, if the annuity becomes effective on or after the normal retirement date of the participant, determined by multiplying the participant's final average earnings by the participant's creditable service and the following applicable percentage:

1. For each participant for creditable service of a type not otherwise specified in this paragraph, 1.3%.

2. For each participant for creditable service as an elected official and for executive service, as defined under s. 40.02 (31), 1985 stats., 1.8%.

3. For each participant, subject to Titles II and XVIII of the federal social security act, for service as a protective occupation participant, 1.8%.

4. For each participant not subject to Titles II and XVIII of the federal social security act, for service as a protective occupation participant, 2.3%.

(c) The amount, if any, which can be provided by accumulated employee and employer additional contributions credited to the participant's account.

(d) If the annuity effective date is prior to the normal retirement date of the participant, the annuity amount computed under par. (b) shall be reduced, as recommended by the actuary and approved by the board, by a percentage or percentages of the

amount of the annuity for each month and any major portion of a month between the effective date of the annuity and the participant's normal retirement date.

(e) The amount of the annuity computed under par. (b) shall be reduced by the amounts, determined under s. 42.244 (4) (b) and (c), 1979 stats., s. 42.246 (1) (e), 1979 stats., s. 42.77 (3) (b) and (c), 1979 stats., and s. 42.79 (1) (e), 1979 stats., for those teacher participants specified in those sections.

(2m) The following provisions apply only to participants who are participating employees after March 9, 1984:

(a) The retirement annuity in the normal form is a straight life annuity payable for the life of the annuitant.

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

(c) The annuity which can be provided from a sum equal to 200 percent of the excess accruing after June 30, 1966, for teacher participants, or December 31, 1965, for all other participants, of the participant's required contribution accumulation reserved for a variable annuity over the amount to which the contributions would have accumulated at the core annuity division effective rate if not so reserved. If the participant's required contribution accumulation reserved for a variable annuity is less than the amount to which the contributions would have accumulated at the core annuity division effective rate if not reserved, the annuity shall be reduced by the amount which could be provided by a sum equal to 200 percent of the deficiency.

(d) The amount, if any, which can be provided by accumulated employee and employer additional contributions credited to the participant's account.

(e) A monthly annuity in the normal form computed on the basis of the participant's final average earnings and creditable service, if the annuity becomes effective on or after the normal retirement date of the participant, determined by multiplying the participant's final average earnings by the participant's creditable service and the following applicable percentage:

1. For each participant for creditable service of a type not otherwise specified in this paragraph that is performed before January 1, 2000, 1.765%; for such creditable service that is performed on or after January 1, 2000, 1.6%.

2. For each participant for creditable service as an elected official or as an executive participating employee that is performed before January 1, 2000, 2.165%; for such creditable service that is performed on or after January 1, 2000, 2%.

3. For each participant subject to titles II and XVIII of the federal Social Security Act, for service as a protective occupation participant that is performed before January 1, 2000, 2.165%; for such creditable service that is performed on or after January 1, 2000, 2%.

4. For each participant not subject to titles II and XVIII of the federal Social Security Act, for service as a protective occupation participant that is performed before January 1, 2000, 2.665%; for such creditable service that is performed on or after January 1, 2000, 2.5%.

(em) 1. For the purpose of determining the applicable percentage rate under par. (e), all of the following shall apply:

a. Any creditable service forfeited by a participating employee before January 1, 2000, and which is subsequently reestablished by the participating employee under s. 40.285 (2) (a), shall be considered to have been performed before January 1, 2000.

b. Any creditable service received under s. 40.285 (2) (b), which is based on service performed before January 1, 2000, shall be considered to have been performed before January 1, 2000.

c. Any creditable military service received under s. 40.02 (15) (c), which is based on creditable service performed before January 1, 2000, shall be considered to have been performed before January 1, 2000.

2. This paragraph shall only apply to participants who are participating employees on or after January 1, 2000.

(f) 1. If the annuity effective date is before the normal retirement date of the participant, the annuity amount computed under par. (e) shall be reduced by 0.4% for each full month, and for each partial month including at least 15 days, before the participant's normal retirement date, except as provided in subds. 2. to 4.

2. For a participant who terminates covered employment on or after July 1, 1990, and whose annuity is computed under par. (e) 1. or 2., the 0.4% reduction of the annuity amount under subd. 1. shall be reduced by subtracting from the 0.4% an amount equal to 0.001111% for each month of creditable service, except as provided in subds. 3. and 4.

3. Subdivision 2. shall not apply to those months specified in subd. 1. that precede the date on which the participant attains the age of 57.

4. The resulting percentage by which the annuity amount is reduced under subd. 2. may not be less than zero.

(fm) Notwithstanding s. 40.02 (17) (intro.), for purposes of determining creditable service under par. (f) 2., participants with at least 0.75 of a year of creditable service in any annual earnings period shall be treated as having one year of creditable service for that annual earnings period. To be eligible for the treatment provided by this paragraph, the participant must have earned only a partial year of creditable service in at least 5 of the 10 annual earnings periods immediately preceding the annual earnings period in which the participant terminated covered employment, and the participant must notify the department of the applicability of this paragraph to the participant's service. The participant is not eligible for the treatment provided by this paragraph if such notification is provided by the participant later than 60 days after the participant's annuity effective date. This paragraph does not apply to service credited under s. 40.02 (15) or to creditable service as a teacher.

(g) The employer may pay to the department part or all of the costs of the actuarial reduction applicable to a participating employee under par. (f), and the actuarial reduction for the amount paid may not be applied under par. (f), if all of the following conditions are met:

1. The employer has elected to pay part or all of the costs of the required actuarial reduction, the action is effective after June 30, 1990, and the employer has not taken any action to rescind the election.

2. The participant voluntarily terminates employment with the employer after June 30, 1990, and after the employer elects under subd. 1.

3. The employer pays to the department the difference, as determined by the department, between the actuarial cost of the annuity which would have been paid if the employer had not elected under subd. 1. and the actuarial cost of the annuity payable. The amount so paid shall be credited as employer current service contributions under s. 40.05 (2) (a), and shall be included with the first payment made under s. 40.05 (2) after the department notifies the employer of the amount due.

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

(4) (a) Subject to all requirements under the internal revenue code, the department shall distribute to the participant the entire amount that is credited to the account of a participant under the Wisconsin retirement system no later than the required beginning date, unless the department distributes this amount as an annuity or in more than one payment. If the department distributes this amount as an annuity or in more than one payment, the department shall begin the distribution no later than the required beginning date.

(b) In the calendar year immediately preceding the calendar year of a participant's required beginning date, if the department distributes the amount that is credited to the account of a participant under the Wisconsin retirement system in a form other than as a lump sum payment, the department, subject to all requirements under the internal revenue code, shall calculate the distribution to the participant according to one of the following:

1. The life of a participant or, if the annuity is in the form of a joint and survivor annuity, the joint lives of the participant and the named survivor.

2. For an annuity authorized under s. 40.24 (1) (f), a term certain not to exceed the life expectancy of the participant or, if the annuity is in the form of a joint and survivor annuity, the joint life expectancies of the participant and the named survivor.

(c) If a participant during the calendar year in which he or she attains 69.5 years, or the alternate payee during the calendar year in which the participant attains 69.5 years, does not apply before December 31 in that year for a distribution of the amount that is credited to the account of a participant under the Wisconsin retirement system, the department shall begin, effective the following January 1, an automatic distribution to the participant or alternate payee in the form of an annuity specified under s. 40.24 (1) (c) or as determined by the department by rule. If the department makes an automatic distribution under this paragraph, the beneficiary designation filed with the department before the date on which the department begins the automatic distribution is no longer applicable under ss. 40.71 and 40.73. Unless the participant or alternate payee files a subsequent beneficiary designation with the department after the date on which the department begins the automatic distribution, the department shall pay any death benefit as provided under s. 40.02 (8) (a) 2.

(d) If a participant dies after the department begins to distribute the amount that is credited to the account of a participant under the Wisconsin retirement system, but before the entire amount in the account has been distributed, the department shall distribute the remaining portion of the account at least as rapidly as is provided in the manner of distribution selected by the participant. If the beneficiary does not apply to the department to continue the distribution, within a period specified by rule, the department shall pay the remaining distribution to the beneficiary as a lump sum.

(e) 1. Subject to subds. 2. to 4., if a participant dies before the distribution of benefits has commenced and the participant's beneficiary is the spouse, the department shall begin the distribution within 5 years after the date of the participant's death.

2. If the spouse files a subsequent beneficiary designation with the department, the payment of the distribution may be deferred until the January 1 of the year in which the participant would have attained the age of 70.5 years.

3. If the spouse does not apply for a distribution, the distribution shall begin as an automatic distribution as provided under subd. 1. or under par. (c), whichever distribution date is earlier.

4. If the spouse dies, but has designated a new beneficiary, the birth date of the spouse shall be used for the purposes of determining the required beginning date.

5. The department shall specify by rule all procedures relating to an automatic distribution to the spouse. These rules shall comply with the internal revenue code.

(f) If a participant dies before the distribution of benefits has commenced and the participant's beneficiary is not the spouse, the beneficiary shall do one of the following:

1. Elect a lump sum payment by December 31 of the 5th calendar year after the date of the participant's death.

2. Elect an annuity benefit, not to exceed his or her life expectancy, by December 31 of the calendar year after the date of the participant's death.

(g) Nothing in this subsection shall be construed to create any benefit, lump sum payment option or form of annuity not otherwise expressly provided for in this subchapter.

History: 1981 c. 96, 386; 1983 a. 141, 267, 391; 1987 a. 309, 372; 1987 a. 403 s. 256; 1989 a. 13; 1989 a. 56 s. 259; 1991 a. 152; 1995 a. 225, 302, 414; 1997 a. 35, 69; 1999 a. 11; 2003 a. 33; 2005 a. 153, 154.

40.24 Annuity options. (1) Except as provided in subs. (2) to (4) and (7), any participant who is eligible to receive a retirement annuity in the normal form may elect to receive the actuarial equivalent of the normal form annuity in any of the following optional annuity forms:

(a) A straight-life annuity terminating at the death of the annuitant.

(b) A straight life annuity with a guarantee of 60 monthly payments.

(c) An annuity payable for the life of the annuitant with a guarantee of 180 monthly payments.

(d) An annuity payable for the life of the annuitant, and after the death of the annuitant, monthly payments as elected by the participant of either 100% or 75% of the amount of the annuity paid to the annuitant to be continued to the named survivor, for life, who was designated by the participant in the original application for an annuity. If the participant's annuity effective date is on or after January 1, 1992, or, if the department specifies an earlier date that is not earlier than April 23, 1992, on or after the date specified by the department, and if the death of the named survivor occurs before the death of the annuitant and before the first day of the 61st month beginning after the annuity effective date, the annuity option under this paragraph shall be converted to the annuity option under par. (a) and, beginning with the annuity payment for the first month beginning after the death of the named survivor, the annuity amount shall be the amount that the annuitant would be receiving on that date if the participant had elected the annuity option under par. (a) in the original application for an annuity.

(e) A reduced annuity payable in the normal form or any of the optional life forms provided under this section, plus a temporary annuity payable monthly but terminating with the payment payable in the month following the month in which the annuitant attains age 62 or, if earlier, on the death of the annuitant. It is the intent of this option that so far as is practicable the amounts of the life annuity and temporary annuity shall be determined so that the annuitant's total anticipated benefits from the fund and from his or her primary OASDHI benefit will be the same each month both before and after attainment of age 62.

(f) From accumulated additional contributions made under s. 40.05 (1) (a) 5. only, an annuity certain payable for and terminating after the number of months specified by the applicant, regardless of whether the applicant dies before or after the number of months specified, provided that the monthly amount of the annuity certain is at least equal to the minimum amount established under s. 40.25 (1) (a). Subject to the period of distribution

required under s. 40.23 (4) (b) 2., the number of months specified shall not exceed 180 and shall not be less than 24. If the death of the annuitant occurs prior to the expiration of the certain period, the remaining payments shall be made in accordance with s. 40.73 (2) without regard to any other annuity payments payable to the beneficiary. An annuity under this paragraph may be initiated prior to any other annuity amount provided under this subchapter and prior to age 55 if all other qualifications for receiving an annuity payment are met.

(g) Any one optional life annuity form provided by rule.

(2) The department may modify any optional annuity form prescribed in sub. (1) (a) to (f) by rule as necessary to conform to federal regulations.

(3) Any participant specified under sub. (1) (intro.) may elect to receive the amount provided by accumulated additional contributions in a different optional form than the balance of the annuity.

(4) Any optional annuity form under this section shall be based on actuarial equivalent values with due regard to selection against the fund, shall not provide a greater monthly amount payable to others upon the death of the participant than the amount which would have been payable to the participant if the participant had continued to live and shall not be changed after the effective date of the annuity unless the participant's request for the change is received by the department within 60 days after the date on which the first annuity check, share draft or other draft is issued or funds are otherwise transferred.

(5) An annuity in a form other than the normal form shall be the actuarial equivalent of the annuity in the normal form if, on the effective date of the annuity, the annuity has the same single-sum present value as the annuity in the normal form, as calculated by the department according to methods and assumptions specified by the actuary.

(6) If a participant's annuity is not effective until after the earlier of the participant's normal retirement date under s. 40.02 (42) (a) to (d) or the date on which the participant attains the age of 62 years and the participant elects an optional annuity form, the monthly amount of annuity provided by conversion of the benefit computed under s. 40.23 (2m) (e) to the optional form elected shall not be less than the monthly amount of annuity which would have been paid had the participant retired on the earlier of the participant's normal retirement date under s. 40.02 (42) (a) to (d) or the date on which the participant attains the age of 62 years and elected the same optional form of annuity and the same beneficiary. It shall be assumed for purposes of calculating the amount of an annuity under this subsection that all of the participant's earned annuity was earned prior to the participant's normal retirement date, but the department shall use the beneficiary's actual age on the effective date of the annuity.

(7) (a) Any participant who has been married to the same spouse 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% of the amount of the annuity to be continued to the beneficiary, for life, upon the death of the participant, and the participant shall designate the spouse as the beneficiary, 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 unless the participant establishes to the satisfaction of the department that, by reason of absence or other inability, the spouse's signature may not be obtained. This subsection does not apply to any of the following:

1. Participants whose applications for a retirement annuity specify an annuity effective date before August 1, 1986.

2. That portion of a disability annuity which, under s. 40.63 (8) (d), is not eligible for election of an annuity option by the participant.

3. Benefits paid under s. 40.25 (1) (a).

4. Benefits paid from accumulated additional contributions.

5. Benefits payable to a beneficiary from a deceased participant's account.

6. Automatic distributions under s. 40.23 (4).

(b) In administering this subsection, the secretary may require the participant to provide the department with a certification of the participant's marital status and of the validity of the spouse'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% of the amount of the annuity paid to the annuitant to be continued to the spouse beneficiary.

History: 1981 c. 96; 1983 a. 141 ss. 17, 20; 1983 a. 290, 368, 538; 1985 a. 151; 1989 a. 13, 166; 1991 a. 152; 1993 a. 426; 1995 a. 302; 1997 a. 110.

40.25 Lump sum payments. (1) (a) If all other requirements for payment of a retirement annuity are met and if the retirement annuity in the normal form which could be provided under s. 40.23 is equal to or less than \$100 monthly for a benefit with an effective date that is on or after April 23, 1994, but before the end of the calendar year of 1993 or, for a benefit with an effective date in a subsequent calendar year, the monthly amount applied under this paragraph for the previous calendar year increased by the salary index and ignoring fractions of the dollar, the then present value, including additional contributions, of the annuity shall be paid in a single sum instead of as an annuity. The additional contribution accumulations shall not be included in determining whether a single sum should be paid if the optional form provided by s. 40.24 (1) (f) or a lump sum under sub. (4) is selected.

(b) If all other requirements for payment of a retirement annuity are met and if the retirement annuity in the normal form which could be provided under s. 40.23 from all available accumulations and credits, other than accumulations from additional contributions, is more than \$100 and less than \$200 monthly for a benefit with an effective date that is on or after April 23, 1994, but before the end of the calendar year of 1993 or, for a benefit with an effective date in a subsequent calendar year, the monthly amounts applied under this paragraph for the previous calendar year increased by the salary index and ignoring fractions of the dollar, then any participant may elect to receive, in lieu of the annuity, the then present value, including additional contributions, of the annuity in a single sum.

(2) Subject to sub. (2t), if all requirements for payment of a retirement annuity are met except attainment of age 55 or age 50 for protective occupation participants, a separation benefit may be paid, if the participant's written application for a separation benefit is received by the department prior to the participant's 55th birthday or 50th birthday for protective occupation participants, in an amount equal to the additional and employee required contribution accumulations of the participant on the date the application for a separation benefit is approved.

(2t) A protective occupation participant who is covered by the presumption under s. 891.455 and who applied for a duty disability benefit under s. 40.65 on or after May 12, 1998, may not be paid a separation benefit under sub. (2) during the period in which he or she is receiving the duty disability benefit.

(3) Upon administrative approval of payment of an amount under either sub. (1) or (2), the participant's account shall be closed and there shall be no further right, interest or claim on the

part of the former participant to any benefit from the Wisconsin retirement system except as provided by sub. (5) and s. 40.285 (2) (a). Any former participant who is subsequently employed by any participating employer shall be treated as a new participating employee for all purposes of this chapter. New accumulations of contributions and credits and the computation of any future benefits shall bear no relationship to any accumulations and credits paid as single sums under sub. (1) or (2).

(3m) A participant's application for a lump sum payment under sub. (1) (b) or (2), filed after May 7, 1994, shall be signed by both the participant and the participant's spouse, if the participant has been married to that spouse for at least one year immediately preceding the date the application is filed. The department may promulgate rules that allow for the waiver of the requirements of this subsection for a situation in which, by reason of absence or incompetency, the spouse's signature may not be obtained. This subsection does not apply to any benefits paid from accumulated additional contributions.

(4) If all the requirements for payment of a retirement annuity or a separation benefit are met, except filing of an application, a participant may elect that the accumulation from the participant's additional contributions made under s. 40.05 (1) (a) 5. be paid as a lump sum in lieu of an annuity from those additional contributions.

(5) (a) Rights and creditable service forfeited under sub. (3) or s. 40.04 (4) (a) 3. shall be reestablished if the participant receives the benefit resulting in the forfeiture after being discharged and is subsequently reinstated to a position with the participating employer by court order, arbitration award or compromise settlement as a result of an appeal of the discharge.

(b) The full amount of the benefit paid, plus interest at the effective rate, shall be repaid to the Wisconsin retirement system by the employer of an employee whose rights and creditable service are reestablished under par. (a) within 60 days after the effective date of the employee's reinstatement. The amount repaid by the employer under this paragraph shall be deducted by the employer from any payment due the employee as a result of the resolution of the appeal or, if that amount is insufficient, the balance shall be deducted from the employee's earnings except the amount deducted from each earnings payment shall be not less than 10% nor more than 25% of the earnings payment. If the employee terminates employment the employer shall notify the department of the amount not yet repaid, including any interest due, at the same time it notifies the department of the termination of employment, and the department shall repay to the employer the balance of the amount due from retentions made under s. 40.08 (4). The employer may charge interest at a rate not in excess of the current year's assumed rate on any amount unpaid at the end of any calendar year after the year of reinstatement.

History: 1981 c. 96, 201; 1981 c. 386 ss. 14 to 16, 19; 1983 a. 290; 1989 a. 13, 166; 1991 a. 152, 269; 1993 a. 229, 360, 426; 1995 a. 302; 1997 a. 69, 173, 237; 1999 a. 32; 2003 a. 33.

Cross Reference: See also s. ETF 20.18, Wis. adm. code.

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

(2) Upon termination of an annuity under sub. (1), the retirement account of the participant whose annuity is so terminated shall be reestablished on the following basis:

(a) The then present value of any portion of the terminated annuity which was originally provided by employee or employer

additional contributions shall be credited to the corresponding additional contribution account.

(b) The amount of the annuity payments, excluding any portion originally provided by additional contributions, which would have been paid under the terminated annuity, if the annuity had been a straight life annuity, prior to the participant's normal retirement date or prior to the annuity termination date, whichever would first occur, shall be credited to a memorandum account which is subject to s. 40.04 (4) (a) 2., 2g. and 2m. and (c). If the annuity was recomputed under s. 40.08 (1m) because of a qualified domestic relations order, the memorandum account established under this paragraph shall be adjusted as provided under s. 40.08 (1m) (f) 2.

(c) Except as provided in pars. (a) and (b), the retirement account shall be reestablished as if the terminated annuity had never been effective, including crediting of interest and of any contributions made and creditable service earned during the period the annuity was in force.

(3) (a) Upon subsequent retirement and application for an annuity, the annuity of a former annuitant shall be recomputed, except as provided by pars. (b), (bm) and (c), as an original annuity, based upon the participant's attained age on the effective date of the recomputed annuity, in an optional form as elected by the participant under s. 40.24.

(b) Except as provided in par. (bm), if changes in the statutes after the effective date of the original annuity would result in a change in the amount of an annuity recomputed under this subsection, the statutory changes shall not apply to any benefit based on creditable service earned prior to the effective date of the original annuity and the laws in effect as of that original effective date apply.

(bm) If a former annuitant becomes a participating employee and accumulates at least 3 continuous years of creditable service before subsequent retirement and application for an annuity under this subsection, and if changes in the statutes after the effective date of the original annuity would result in a change in the amount of an annuity recomputed under this subsection, the annuity of the former annuitant shall be recomputed as follows:

1. For creditable service earned after termination of the original annuity, the annuity shall be recomputed as provided under par. (a).

2. For creditable service earned before the effective date of the original annuity, the annuity shall be recomputed based on the laws in effect as of that original effective date, except that the portion of creditable service earned under this subdivision which is in an amount equal to the amount of creditable service earned under subd. 1. shall be recomputed as provided under par. (a).

(c) The amount of the recomputed annuity shall be reduced by the amount of annuity which could be provided, under the actuarial tables in effect on the annuity effective date, by the balance in the memorandum account established under sub. (2) (b) and that account shall be closed out.

(4) Upon subsequent termination of all participating employment of an annuitant who receives compensation subject to s. 40.05 (1), but whose compensation did not exceed the level specified in sub. (1) which would have required termination of the original annuity, any contributions made under s. 40.05 (1) or (2) (g) 1. based on the additional employment shall upon application be paid the annuitant on the basis specified in s. 40.25 (2) and (3) without regard to the age requirement and without any change in the original annuity.

(5) If a participant applies for an annuity or lump sum payment during the period in which less than 30 days have elapsed between the termination of employment with a participating employer and becoming a participating employee with any participating employer, all of the following shall apply:

(a) The participant shall not qualify for an annuity under s. 40.23 (1) (a) 1.

(b) The participant may not receive any benefit under this chapter on which the receipt of an annuity is a condition.

(c) Any annuity or lump sum payment made to the participant shall be considered to have been made in error and is subject to s. 40.08 (4). The sum of the payments made in error shall be credited to a memorandum account. The memorandum account is subject to s. 40.04 (4) (a) 2., 2g. and 2m. and (c). If the annuity was recomputed under s. 40.08 (1m), the memorandum account established under this paragraph shall be adjusted pursuant to s. 40.08 (1m) (f) 2. The retirement account of a participant paid in error, and whose annuity was terminated, shall be reestablished as if the terminated annuity had never been effective, including the crediting of interest.

History: 1981 c. 96; 1983 a. 255, 267, 290, 538; 1987 a. 138, 372; 1989 a. 13, 218; 1991 a. 141, 152, 315; 1993 a. 213; 1995 a. 302; 1999 a. 11.

40.27 Post-retirement adjustments. (1) SUPPLEMENTAL BENEFITS. Any person who received a supplemental benefit under s. 41.23, 1979 stats., s. 42.49 (10), 1979 stats., or s. 42.82, 1979 stats., is eligible to continue receiving a supplemental benefit in the amounts determined under s. 41.23, 1979 stats., s. 42.49 (10), 1979 stats., or s. 42.82, 1979 stats. Any portion of a benefit payable under s. 40.19 (4) (f) which was not granted in accordance with the law in effect at the time of the granting shall not be subject to this subsection and shall not be eligible for a supplemental benefit.

(a) Any benefit payable by virtue of this subsection in excess of the amounts payable under other provisions of this chapter shall be paid from and shall be subject to the continuation of the appropriation made by s. 20.515 (1) (a).

(b) Determinations of eligibility and the amount of any payment to be made under this subsection or sub. (1m) or (3) shall be made by the department, and shall be certified by the department for payment in the same manner as for payments from the Wisconsin retirement system.

(c) No payment shall be made under this subsection or sub. (1m) or (3), nor shall any right accrue under this subsection or sub. (1m) or (3), for or after any month following termination of the annuity on which the supplement was based.

(d) Benefits under this subsection and subs. (1m) and (3) shall be payable to the surviving beneficiary, who receives an annuity, of eligible persons.

(1m) ADDITIONAL SUPPLEMENTAL BENEFITS. Any person who received an annuity for September 1974 from the Wisconsin retirement system shall be eligible to receive all of the following:

(a) The monthly annuities for which that person was eligible and which that person received for September 1974.

(b) An amount to be paid from the appropriation account under s. 20.515 (1) (a), subject to the continuation of that appropriation, equal to 4% times 5 years times either \$200 or the initial monthly annuity, excluding amounts provided from additional deposits, whichever is smaller.

(c) Any supplement for which that person is eligible under sub. (1) and s. 41.23, 1979 stats., s. 42.49 (10), 1979 stats., or s. 42.82, 1979 stats.

(2) CORE ANNUITY RESERVE SURPLUS DISTRIBUTIONS. Surpluses in the core annuity reserve established under s. 40.04 (6) and (7) shall be distributed by the board if the distribution will result in at least a 0.5 percent increase in the amount of annuities in force, except as otherwise provided by the department by rule, on recommendation of the actuary, as follows:

(a) The distributions shall be expressed as percentage increases in the amount of the monthly annuity in force, including prior distributions of surpluses but not including any amount paid from funds other than the core annuity reserve fund, preceding the effective date of the distribution. For purposes of this subsection, annuities in force include any disability annuity suspended because the earnings limitation had been exceeded by that annuitant in that year.

(b) Prorated percentages based on the annuity effective date may be applied to annuities with effective dates during the calendar year preceding the effective date of the distribution, as provided by rule, but no other distinction may be made among the various types of annuities payable from the core annuity reserve.

(c) The distributions shall not be offset against any other benefit being received but shall be paid in full, nor shall any other benefit being received be reduced by the distributions. The annuity reserve surplus distributions authorized under this subsection may be revoked by the board in part or in total as to future payments upon recommendation of the actuary if a deficit occurs in the core annuity reserves and such deficit would result in a 0.5 percent or greater decrease in the amount of annuities in force, except as otherwise provided by the department by rule.

(d) Notwithstanding s. 40.03 (2) (i), (7) (d), and (8) (d), the department may promulgate rules under this subsection without the approval of the teachers retirement board and the Wisconsin retirement board.

(3) ADDITIONAL SUPPLEMENTAL BENEFIT ADJUSTMENT. Beginning on November 1, 1997, any person who is eligible to receive supplemental benefits under subs. (1) and (1m) shall be eligible to receive an additional supplemental benefit, to be paid from the appropriation account under s. 20.515 (1) (a), in an amount equal to the amount by which the supplemental benefits paid under subs. (1) and (1m) are exceeded by the supplemental benefit that the person was eligible to receive on October 1, 1997, from the distribution paid under s. 40.04 (3) (e) 1. c., 1995 stats., as affected by adjustments under sub. (2) made after 1987, less any increase to the person's base annuity under this chapter that results from any equitable distribution made by the board under the judgment in *Wisconsin Retired Teachers Ass'n v. Employee Trust Funds Bd.*, 207 Wis. 2d 1 (1997), without regard to adjustments to sub. (2).

History: 1981 c. 96; 1983 a. 290, 394; 1987 a. 27, 43; 1995 a. 302; 1997 a. 26; 2003 a. 153; 2005 a. 153.

40.28 Variable benefits. (1) Any annuity provided to a participant whose accounts include credits segregated for a variable annuity shall consist of a core annuity and a variable annuity.

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

1. The amount of the additional contribution accumulations reserved for a variable annuity as of the date the annuity begins;

2. The amount equal to 200% of employee required contribution accumulations reserved for a variable annuity as of the date the annuity begins; and

3. The amount equal, as of the date the annuity begins, to the accumulated prior service credits reserved for the participant for a variable annuity within the employer accumulation account, together with the net gain or loss credited to the accumulations.

(b) The initial amount of the core annuity shall be the excess of the total annuity payable, as determined under s. 40.23, over the amount of the variable annuity.

(2) Whenever the balance in the variable annuity reserve, as of December 31 of any year, exceeds or is less than the then present value of all variable annuities in force, determined in accordance with the rate of interest and approved actuarial tables then in effect, by at least 2% of the present value of all variable annuities in force, the amount of each variable annuity payment shall be proportionately increased or decreased, disregarding fractional percentages, and effective on a date determined by rule, so as to reduce the variance between the balance of the variable annuity reserve and the present value of variable annuities to less than one percent.

(3) Except as otherwise specifically provided, benefits based on variable accumulations shall be determined on the same basis and paid in the same manner and at the same time as benefits based

on accumulations not so segregated insofar as practicable considering the nature of variable annuities.

History: 1981 c. 96; 2005 a. 153.

40.285 Purchase of creditable service. (1) GENERAL REQUIREMENTS. (a) Deadline for purchase of creditable service. An application to purchase creditable service must be received by the department, on a form provided by the department, from an applicant who is a participating employee on the day that the department receives the application.

(b) *Calculation of creditable service.* Creditable service purchased under this section shall be calculated in an amount equal to the year and fractions of a year to the nearest one-hundredth of a year.

(c) *Use of creditable service.* Credit for service purchased under this section is added to a participant's total creditable service, but may not be treated as service for a particular annual earnings period and does not confer any other rights or benefits.

(d) *Applicability of Internal Revenue Code.* The crediting of service under this section is subject to any applicable limit or requirement under the Internal Revenue Code.

(2) CONDITIONS FOR THE PURCHASE OF DIFFERENT TYPES OF CREDITABLE SERVICE. (a) Forfeited service. 1. A participating employee may purchase creditable service forfeited in the manner specified in subd. 2., subject to all of the following:

a. The participating employee must have at least 3 continuous years of creditable service at the time of application to purchase the creditable service.

b. The number of years that may be purchased may not be greater than the accumulated current creditable service of the participating employee at the date of application, excluding all creditable service purchased under this section or s. 40.02 (17) (b), 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., s. 40.02 (17) (e), 1987, 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., s. 40.02 (17) (i), 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., s. 40.02 (17) (k), 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., s. 40.25 (6), 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., or s. 40.25 (7), 1991, 1993, 1995, 1997, 1999, and 2001 stats., less the number of years of creditable service previously purchased under this paragraph or s. 40.25 (6), 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats.

c. The participating employee pays to the fund an amount equal to the employee's statutory contribution on earnings under s. 40.05 (1) (a) for each year of forfeited service to be purchased, based upon the participating employee's final average earnings, determined as if the employee had retired on the first day of the annual earnings period during which the department receives the application. The amount payable shall be paid in a lump sum payment, except as provided in sub. (4) (b), and no employer may pay any amount payable on behalf of a participating employee.

d. Upon receipt by the fund of the total payment required under this subdivision, the creditable service meeting the conditions and requirements of this paragraph shall be credited to the account of the participating employee making the payment.

2. Creditable service may be purchased under this paragraph if it was forfeited as a result of any of the following:

a. Payment of an amount under s. 40.25 (2).

b. The receipt of a separation or withdrawal benefit under the applicable laws and rules in effect prior to January 1, 1982.

c. Payment of an amount under s. 40.25 (2m), 1991, 1993, 1995, and 1997 stats.

3. Unless otherwise provided by the department by rule, a participating employee may not purchase creditable service under this paragraph more than 2 times in any calendar year.

(b) *Other governmental service. 1.* Each participating employee whose creditable service terminates on or after May 1, 1992, and who has performed service, other than military service, as an employee of the federal government or a state or local gov-

ernmental entity in the United States, other than a participating employer, that is located within or outside of this state, or each participating employee whose creditable service terminates on or after May 4, 1994, and who has performed service as an employee for an employer who was not at the time a participating employer but who subsequently became a participating employer, may receive creditable service for such service if all of the following occur:

a. The participant 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 has at the date of application, excluding all creditable service purchased under this section or s. 40.02 (17) (b), 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., s. 40.02 (17) (e), 1987, 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., s. 40.02 (17) (i), 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., s. 40.02 (17) (k), 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., s. 40.25 (6), 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., or s. 40.25 (7), 1991, 1993, 1995, 1997, 1999, and 2001 stats., less the number of years of creditable service previously purchased under this paragraph or s. 40.25 (7), 1991, 1993, 1995, 1997, 1999, and 2001 stats.

c. At the time of application, the participant 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 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.

2. The creditable service granted under this paragraph shall be the same type of creditable service as the type that is granted to participants who are not executive participating employees, elected officials, or protective occupation participants.

3. A participating employee may apply to receive part or all of the creditable service that he or she is eligible to receive under this paragraph.

4. A participant may not receive creditable service under this paragraph for service that is used for the purpose of establishing entitlement to, or the amount of, any other benefit to be paid by any federal, state, or local government entity, except a disability or OASDHI benefit or a benefit paid for service in the national guard.

5. Unless otherwise provided by the department by rule, a participating employee may not purchase creditable service under this paragraph more than 2 times in any calendar year.

(c) *Uncredited elected official and executive participating employee service.* Each executive participating employee whose creditable service terminates on or after May 3, 1988, and each participating employee who is a present or former elected official or an appointee of a present or former elected official and who did not receive creditable service under s. 40.02 (17) (e), 1987 stats., or s. 40.02 (17) (e), 1989 stats., and whose creditable service terminates on or after August 15, 1991, who was previously in the position of the president of the University of Wisconsin System or in a position designated under s. 20.923 (4), (8), or (9), but did not receive creditable service because of age restrictions, may receive creditable service equal to the period of executive service not credited if the participant pays to the department a lump sum payment equal to 5.5% of one-twelfth of the employee's highest earnings in a single annual earnings period multiplied by the number of months of creditable service granted under this paragraph.

(d) *Qualifying service.* Each participating employee in the Wisconsin retirement system whose creditable service terminates on or after January 1, 1982, who was previously a participant in the Wisconsin retirement fund and who has not received a separa-

tion benefit may receive creditable service equal to the period of service during any qualifying period under s. 41.02 (6) (c), 1969 stats., s. 66.901 (4) (d), 1967 stats., or under any predecessor statute, but not to exceed 6 months. The additional creditable service shall be granted upon application by the employee if the applicant pays to the department a lump sum payment equal to 5% of one-twelfth of the employee's highest earnings in a single annual earnings period multiplied by the number of months of creditable service granted under this paragraph.

(e) *Teacher improvement leave.* Each participating employee in the Wisconsin retirement system whose creditable service terminates on or after April 25, 1990, and whose earnings include compensation for teacher improvement leave granted by the board of regents of the Wisconsin State Colleges during the period beginning on January 1, 1964, and ending on August 31, 1967, in a written and satisfied contract, may receive creditable service for the period for which those earnings were received in an amount not to exceed one year if all of the following apply:

1. The participant meets the requirements of this paragraph and submits an application to the board of regents of the University of Wisconsin System.

2. The board of regents of the University of Wisconsin System certifies the creditable service requested under subd. 1.

3. The participant pays to the department a lump sum equal to 5% of one-twelfth of the employee's highest earnings in a single annual earnings period multiplied by the number of months of creditable service that is granted under this paragraph.

4. The employer does not pay any amount payable under this paragraph on behalf of any participating employee.

(f) *Uncredited junior teaching service.* Each participating employee whose creditable service terminates on or after May 11, 1990, and who submits to the department proof that the participant performed service in this state as a junior teacher, as defined in s. 42.20 (6), 1955 stats., that was not credited under s. 42.40, 1955 stats., shall receive creditable service for the period for which that service was performed, even if the participant did not become a member of the state teachers retirement system after performing that service, if all of the following occur:

1. The participant pays to the department a lump sum equal to 5% of one-twelfth of the employee's highest earnings in a single annual earnings period multiplied by the number of months of creditable service that is granted under this paragraph.

2. The employer does not pay any amount payable under this paragraph on behalf of any participating employee.

(3) **APPLICATION PROCESS.** (a) *Provision of application forms and estimates.* Upon request, the department shall provide a participating employee an application form for the purchase of creditable service under sub. (2) and shall also provide to the participating employee an estimate of the cost of purchasing the creditable service.

(b) *Certification of plan-to-plan transfers.* Upon request, the department shall provide a participating employee a transfer certification form for payments made by a plan-to-plan transfer under sub. (5) (b). If the participating employee intends to make payments from more than one plan, the participating employee must submit to the department a separate transfer certification form for each plan from which moneys will be transferred.

(4) **PAYMENT.** (a) *Required with application.* Except as provided in par. (b), the department may not accept an application for the purchase of creditable service without payment in full of the department's estimated cost of creditable service accompanying the application. A participating employee may also do any of the following:

1. Use his or her accumulated after-tax additional contributions that are made under s. 40.05 (1) (a) 5., including interest, to make payment.

2. Use his or her accumulated contributions, including interest, to a tax sheltered annuity under section 403 (b) of the Internal Revenue Code, to make payment, but only if the participating

employee's plan under section 403 (b) of the Internal Revenue Code authorizes the transfer.

(b) *Alternate payment options.* Notwithstanding par. (a), the department may accept an application under this section without full payment if payment of at least 10% of the department's estimate of the cost of the creditable service is included with the application, in the manner required under par. (a), and the remaining balance is received by the department no later than 90 days after receipt of the application, in the form of a plan-to-plan transfer under sub. (5) (b).

(c) *Final cost calculation for purchase of creditable service.* The department may audit any transaction to purchase creditable service under this subsection and make any necessary correction to the estimated cost of purchasing the creditable service to reflect the amount due under sub. (2). Except as otherwise provided in sub. (7), if the department determines that the final amount that is due is more than the amount paid to the department, the department shall notify the participant of the amount of the shortfall. If payment of the amount of the shortfall is not received by the department within 30 calendar days after the date on which the department sends notice to the participant, the department shall complete the creditable service purchase transaction by prorating the amount of creditable service that is purchased based on the payment amount actually received and shall notify the participant of the amount and category of service that is credited. The department, by rule, shall specify how a forfeited service purchase is prorated when the participant forfeited service under more than one category of employment under s. 40.23 (2m) (e).

(d) *Treatment of amounts to purchase creditable service.* All amounts retained by the department for the purchase of creditable service under sub. (2) shall be credited and treated as employee required contributions for all purposes of the Wisconsin Retirement System, except as provided in ss. 40.23 (3) and 40.73 (1) (am).

(5) TRANSFER OF FUNDS; PLAN-TO-PLAN TRANSFERS. (a) *Transfer from certain benefit plans.* Subject to any applicable limitations under the Internal Revenue Code, a participating employee may elect to use part or all of any of the following to purchase creditable service under this section:

1. Accumulated after-tax additional contributions, including interest, made under s. 40.05 (1) (a) 5.
2. Accumulated contributions treated by the department as contributions to a tax sheltered annuity under section 403 (b) of the Internal Revenue Code, but only if the employer sponsoring the annuity plan authorizes the transfer.

(b) *Other plan-to-plan transfers.* The department may also accept a plan to plan transfer from any of the following:

1. Accumulated contributions under a state deferred compensation plan under subch. VII.
2. The trustee of any plan qualified under sections 401 (a) or (k), 403 (b), or 457 of the Internal Revenue Code, but only if the purpose of the transfer is to purchase creditable service under this section.

(c) *Payment shortfall.* Except as otherwise provided in sub. (7), if the department determines that the amount paid to the department to purchase creditable service under this subsection, together with the amount transferred under a plan-to-plan transfer, is less than the amount that is required to purchase the creditable service, the department shall notify the participant of the amount of the shortfall. If payment of the amount of the shortfall is not received by the department within 30 calendar days after the date on which the department sends notice to the participant, the department shall complete the creditable service purchase transaction by prorating the amount of creditable service that is purchased based on the payment amount actually received and shall notify the participant of the amount and category of service that is credited. The department, by rule, shall specify how a forfeited service purchase is prorated when the participant forfeited service

under more than one category of employment under s. 40.23 (2m) (e).

(6) REFUNDS. Except as provided in sub. (7), if the department determines that the amount paid to the department to purchase creditable service, including any amount in a plan-to-plan transfer, is greater than the amount that is required to purchase the creditable service, as determined by the department, the department shall refund the difference. The department shall pay any refund to the participant, up to the amount received from the participant. Any remaining amount shall be returned to the applicable account in the trust fund for transfers under sub. (5) (a) or to the trustee of a plan which was the source of a plan-to-plan transfer under sub. (5) (b). When more than one plan-to-plan transfer occurs, the department may determine which transfer is to be refunded, in whole or part. No funds transferred to the department by a plan-to-plan transfer may be refunded to a participant.

(7) LIMIT ON PAYMENT OF CORRECTIONS. The department may not require a participant to pay any shortfall under sub. (4) (c) or (5) (c) that is \$25 or less. The department may not pay any refund under sub. (6) if the amount of the refund is \$25 or less.

History: 2003 a. 33 ss. 996 to 999, 1025; 2003 a. 320; 2005 a. 154.

40.29 Temporary disability; creditable service. (1) If a participating employee receives temporary disability compensation under s. 102.43 for any period prior to termination of employment with the participating employer which commences on or after April 30, 1980, the employee shall be:

(a) Credited with creditable service during that period on the same basis as the employee was credited with creditable service immediately prior to the commencement of the period; and

(b) Treated for all purposes of the Wisconsin retirement system, including, but not limited to, contributions and benefits, as having received the amount and rate of earnings the employee would have received if the disability had not occurred, including adjustments in the rate of earnings of the employee made during that period in good faith.

(2) Earnings and creditable service determined under sub. (1) shall be reported by the employer to the department. The employer shall pay all employer and required employee contributions payable under this section with respect to the earnings and current service except the employer may recover from the employee's earnings paid after the employee returns to employment with the employer the amount which the employer paid on behalf of the employee which is customarily actually paid by the employee under s. 40.05 (1). The employer may not deduct the amount recoverable under this subsection from the employee's earnings at a rate greater than 5% of each payment of earnings.

History: 1981 c. 96; 1983 a. 290.

40.30 Intrastate retirement reciprocity. (1) This section shall be construed as an enactment of statewide concern to encourage career public service by employees of the state, 1st class cities and counties having a population of 500,000 or more but shall not be construed to affect the authority of any 1st class city to exercise its power granted under article XI, section 3, of the constitution and chapter 441, laws of 1947, section 31 over any other provisions of any of the retirement systems established by chapter 589, laws of 1921, chapter 423, laws of 1923 or chapter 396, laws of 1937, or to affect the authority of any county having a population of 500,000 or more to exercise its power granted under chapter 405, laws of 1965, over any other provisions of the retirement system established by chapter 201, laws of 1937.

(2) Except as provided in sub. (7), any individual who has vested annuity benefit rights under the Wisconsin retirement system or under one of the retirement systems established by chapter 589, laws of 1921, chapter 423, laws of 1923, chapter 201, laws of 1937 or chapter 396, laws of 1937, who subsequently becomes covered by one or more of those other retirement systems, who, on or after May 11, 1990, terminates all employment covered by

any of those retirement systems and who applies to have benefits begin within a 60–day period under all of those retirement systems from which the individual is entitled to receive benefits may, on a form provided by and filed with the department, elect to have retirement benefit computations and eligibility under each of those retirement systems determined as provided in this section.

(3) The sum of all service credited to the individual under each retirement system specified in sub. (2) shall be used in determining whether the individual has met any vesting period required for retirement benefit eligibility during any subsequent employment covered by any retirement system specified in sub. (2), but shall not be used in determining the amount of the benefit nor in determining credit for military service.

(4) The individual's retirement benefits under each retirement system specified in sub. (2) shall be determined as follows:

(a) The benefit formula used for each type of service credited to the individual shall be the benefit formula in effect for that type of service under the respective retirement system on the date on which the individual terminated all employment covered by any retirement system specified in sub. (2).

(b) Subject to the annual compensation limits under 26 USC 401 (a) (17) for a participating employee who first becomes a participating employee on or after January 1, 1996, the final average salary or final average earnings used in the benefit formula computation for each retirement system under par. (a) shall be the individual's final average salary or final average earnings under the respective retirement system, determined in accordance with the provisions of that retirement system based on the earnings covered by that retirement system and on all service permitted under that retirement system to be used in determining the final average salary or final average earnings, increased by the percentage increase in the average of the total wages, as determined under 42 USC 415 (b) (3) (A), between the date on which the individual terminated all employment covered by that retirement system and the date on which the individual terminated all employment covered by any of those retirement systems.

(5) The benefits computed under this section for each retirement system shall be in lieu of any other benefit payable by that retirement system and may not begin before the individual terminates all employment covered by any retirement system specified in sub. (2).

(6) The secretary may promulgate rules affecting any retirement system specified in sub. (2) to carry out the purposes of this section.

(7) (a) Retirement benefit computations or eligibility may not be determined as provided in this section with respect to service performed by an individual under any retirement system established by chapter 589, laws of 1921, chapter 423, laws of 1923, or chapter 396, laws of 1937, or to service performed by that individual under the Wisconsin retirement system, before the date on which the governing body of the city that established the retirement system under chapter 589, laws of 1921, chapter 423, laws of 1923, or chapter 396, laws of 1937, adopts a resolution approving the application of this section to the retirement benefit computations and eligibility determinations under all of those retirement systems that it has established.

(b) Retirement benefit computations or eligibility may not be determined as provided in this section with respect to service performed by an individual under a retirement system established by chapter 201, laws of 1937, or to service performed by that individual under the Wisconsin retirement system, before the date on which the governing body of the county that established the retirement system under chapter 201, laws of 1937, adopts a resolution approving the application of this section to the retirement benefit computations and eligibility determinations under that retirement system.

(c) A resolution adopted under par. (a) or (b) is irrevocable. Any governing body that adopts a resolution under par. (a) or (b) shall provide the department with a copy of the resolution.

History: 1989 a. 323; 1995 a. 81.

40.31 Maximum benefit limitations. (1) GENERAL LIMITATION. The maximum retirement benefits payable to a participant in a calendar year, excluding benefits attributable to contributions subject to any limitations under s. 40.23 (2) (a), (2m) (c) and (3), may not exceed the maximum benefit limitation established under section 415 (b) of the Internal Revenue Code.

(3) TREATMENT OF DEFINED BENEFIT AND DEFINED CONTRIBUTION PLANS. For the purpose of determining whether a participant's retirement benefits exceed the maximum retirement limitations under this section, all defined benefit plans of the employer, including defined benefit plans that are terminated, shall be treated as a single defined benefit plan and all defined contribution plans of the employer, including defined contribution plans that are terminated, shall be treated as a single defined contribution plan. The department may provide by rule additional limitations for participants who are participating in more than one retirement system.

(4) DIVISION OF BENEFITS. For the purpose of determining whether a participant's retirement benefits exceed the maximum retirement limitations under this section for a participant whose retirement benefits have been divided under s. 40.08 (1m), the participant's retirement benefits shall be measured as if no division had occurred.

History: 1995 a. 302; 1997 a. 237.

40.32 Limitations on contributions. (1) The sum of all contributions allocated to a participant's account under each defined contribution plan sponsored by the employer, including all employer contributions and picked-up contributions credited with interest at the effective rate under ss. 40.04 (4) (a) and (5) (b) and 40.05 (2) (g) and all employee contributions made under ss. 40.02 (17) and 40.05 (1) and (2m), may not in any calendar year exceed the maximum contribution limitation established under section 415 (c) of the Internal Revenue Code.

(2) The department may provide by rule additional limitations for participants who are participating in more than one retirement system.

(3) Any contribution that the department receives, which is allocated to the account of a participant and which exceeds the contributions limitation under this section, may be refunded or credited as provided in s. 40.08 (6). If the department refunds any contributions that exceed the limitation under this section, the department shall first refund amounts voluntarily contributed by a participating employee as an additional contribution under s. 40.05 (1) (a) 5.

History: 1995 a. 302; 1997 a. 237.

SUBCHAPTER III

SOCIAL SECURITY FOR PUBLIC EMPLOYEES

40.40 State–federal agreement. The secretary may, upon receipt of a certified copy of a resolution adopted by the governing body of any employer in accordance with s. 40.41 execute on behalf of the state a modification of the state–federal agreement with the secretary of the federal department of health and human services for the inclusion of a coverage group of the employees of the employer under the OASDHI system in conformity with federal regulations. The state and each employer included under the agreement or modification of the agreement shall thereafter be bound by federal regulations.

History: 1981 c. 96.

40.41 Coverage. (1) Except as provided in sub. (6), all the employees of any employer shall be included under OASDHI through adoption of a resolution by the governing body of the employer providing for the coverage and stating the effective date of coverage. All groups covered by OASDHI, under s. 40.41, 1979 stats., prior to January 1, 1982, shall continue to be covered by OASDHI. Whenever any employer is created, the territory of which includes more than one-half of the last assessed valuation of an employer which prior to creation of the new employer had adopted a resolution under this subsection, and the employer so created assumes the functions and responsibilities of the previous employer with respect to the territory, then the employees of the employer so created shall be covered from the inception of the created employer as if a resolution had been adopted under this subsection.

(2) The resolution provided for in sub. (1) may specify a coverage group comprised of persons under a retirement system which is eligible under federal regulations for inclusion under the state–federal OASDHI agreement, in which case a referendum in conformity with section 218 (d) (3) of the federal social security act shall be conducted. The governor may take any and all actions which may be required in connection with such a referendum. The agreement with the secretary of health and human services may be modified to cover the coverage group.

(3) No agreement with the federal department of health and human services may be executed for the purpose of permitting one or more individuals to transfer by individual choice from that part of a retirement system which is composed of positions of employees who do not desire coverage under OASDHI to that part of a retirement system which is composed of positions of employees who desire OASDHI coverage.

(4) Except as provided in sub. (6), all state employees, all teachers, the participating employees of all participating employers under the Wisconsin retirement system and all employees who would have become a participating employee of a participating employer except for the requirement of s. 40.22 (6) shall be included under OASDHI, notwithstanding sub. (1).

(5) Except as provided in sub. (6), employees under any retirement system included in whole or in part under OASDHI, prior to January 1, 1982, under a referendum or a choice held in conformity with section 218 (d) (3) or 218 (d) (6) of the federal social security act, shall continue to be included under OASDHI in accordance with the results of the referendum or choice, notwithstanding sub. (1).

(6) The following services shall be excluded from OASDHI coverage, and subsequent modifications of the state–federal agreement shall continue to provide for their exclusion:

(a) Services performed by persons or in positions not eligible for inclusion under federal regulations. Any exclusion under this paragraph shall not continue if federal regulations are subsequently modified to include the services.

(b) Services performed by a member of a board or commission, except members of governing bodies, in a position or office which does not normally require actual performance of duty for at least 600 hours in each calendar year. For purposes of this paragraph, a “board” or “commission” is a body referred to in the statutes as a board or commission.

(c) Service performed in the employ of a school, college or university, if the service is performed by a student who is enrolled and regularly attending classes at the school, college or university.

(d) Services of an employee whose participating employment in a position covered by a specific retirement system is not covered by OASDHI by reason of eligibility for a choice provided by statute prior to January 1, 1982, but only with respect to services in a position covered by that retirement system.

(e) Services in police and fire fighter positions under a retirement system except:

1. If the services were covered under the federal OASDHI system under this section prior to the effective date of the retirement system coverage.

2. If the services have been covered under the federal OASDHI system under section 218 (m) of the federal social security act.

(f) Services in a position eligible for participation in the Wisconsin retirement system only by virtue of s. 40.22 (2m). This exclusion does not apply to any employee who is a teacher, who is a participating employee in the Wisconsin retirement system or whose employer has adopted a resolution under sub. (1).

History: 1981 c. 96; 1987 a. 372; 1989 a. 13; 1999 a. 9.

SUBCHAPTER IV

HEALTH AND LONG-TERM CARE BENEFITS

40.51 Health care coverage. (1) The procedures and provisions pertaining to enrollment, premium transmitted and coverage of eligible employees for health care benefits shall be established by contract or rule except as otherwise specifically provided by this chapter.

(2) Except as provided in subs. (10), (10m), (11) and (16), any eligible employee may become covered by group health insurance by electing coverage within 30 days of being hired, to be effective as of the first day of the month which begins on or after the date the application is received by the employer, or by electing coverage prior to becoming eligible for employer contribution towards the premium cost as provided in s. 40.05 (4) (a) to be effective upon becoming eligible for employer contributions. An eligible employee who is not insured, but who is eligible for an employer contribution under s. 40.05 (4) (ag) 1., may elect coverage prior to becoming eligible for an employer contribution under s. 40.05 (4) (ag) 2., with the coverage to be effective upon becoming eligible for the increase in the employer contribution. Any employee who does not so elect at one of these times, or who subsequently cancels the insurance, shall not thereafter become insured unless the employee furnishes evidence of insurability satisfactory to the insurer, at the employee’s own expense or obtains coverage subject to contractual waiting periods. The method to be used shall be specified in the health insurance contract.

(3) The health insurance contract shall establish provisions by which an insured employee or dependents may continue group coverage or convert group coverage to a nongroup policy which, at a minimum, comply with s. 632.897.

(4) The group insurance board shall establish provisions for the continuance of insurance coverage which shall, at a minimum, comply with s. 632.897.

(5) The health insurance contract shall comply with s. 632.897.

(6) This state shall offer to all of its employees at least 2 insured or uninsured health care coverage plans providing substantially equivalent hospital and medical benefits, including a health maintenance organization or a preferred provider plan, if those health care plans are determined by the group insurance board to be available in the area of the place of employment and are approved by the group insurance board. The group insurance board shall place each of the plans into one of 3 tiers established in accordance with standards adopted by the group insurance board. The tiers shall be separated according to the employee’s share of premium costs.

(7) Any employer, other than the state, may offer to all of its employees a health care coverage plan through a program offered by the group insurance board. Notwithstanding sub. (2) and ss. 40.05 (4) and 40.52 (1), the department may by rule establish different eligibility standards or contribution requirements for such employees and employers and may by rule limit the categories of

employers, other than the state, which may be included as participating employers under this subchapter.

(8) Every health care coverage plan offered by the state under sub. (6) shall comply with ss. 631.89, 631.90, 631.93 (2), 631.95, 632.72 (2), 632.746 (1) to (8) and (10), 632.747, 632.748, 632.83, 632.835, 632.85, 632.853, 632.855, 632.87 (3) to (6), 632.895 (5m) and (8) to (14) and 632.896.

(8m) Every health care coverage plan offered by the group insurance board under sub. (7) shall comply with ss. 631.95, 632.746 (1) to (8) and (10), 632.747, 632.748, 632.83, 632.835, 632.85, 632.853, 632.855 and 632.895 (11) to (14).

(9) Every health maintenance organization and preferred provider plan offered by the state under sub. (6) shall comply with s. 632.87 (2m).

(10) Beginning on July 1, 1988, any eligible employee, as defined in s. 40.02 (25) (b) 11., may become covered by group health insurance by electing coverage within 60 days after the date on which he or she ceases to be a participating employee, and by paying the cost of the required premiums, as provided in s. 40.05 (4) (ad). Any eligible employee who does not so elect at the time specified, or who later cancels the insurance, shall not thereafter become insured unless the employee furnishes evidence of insurability satisfactory to the insurer, at the employee's expense or obtains coverage subject to contractual waiting periods, and pays the cost of the required premiums, as provided in s. 40.05 (4) (ad). The method of payment shall be specified in the health insurance contract.

(10m) Any eligible employee, as defined in s. 40.02 (25) (b) 6e. and 6g., may become covered under any health care coverage plan offered under sub. (6), without furnishing evidence of insurability, by submitting to the department, on a form provided by the department and within 30 days after the date on which the department receives the employee's application for a retirement annuity or for a lump sum payment under s. 40.25 (1), an election to obtain the coverage, by obtaining coverage subject to contractual waiting periods and by paying the cost of the required premiums, as provided in s. 40.05 (4) (ad).

(11) An eligible state employee who elects insurance coverage with a county under s. 978.12 (6) may not elect coverage under this section.

(12) Every defined network plan, as defined in s. 609.01 (1b), and every limited service health organization, as defined in s. 609.01 (3), that is offered by the state under sub. (6) shall comply with ch. 609.

(13) Every defined network plan, as defined in s. 609.01 (1b), and every limited service health organization, as defined in s. 609.01 (3), that is offered by the group insurance board under sub. (7) shall comply with ch. 609.

(15m) Every health care plan, except a health maintenance organization or a preferred provider plan, offered by the state under sub. (6) shall comply with s. 632.86.

(16) Beginning on the date specified by the department, but not earlier than March 20, 1992, and not later than July 1, 1992, any eligible employee, as defined in s. 40.02 (25) (b) 6m., may elect coverage under any health care coverage plan offered under sub. (6) by furnishing, at the employee's expense, evidence of insurability satisfactory to the insurer or by obtaining coverage subject to contractual waiting periods, and by paying the cost of the required premiums, as provided in s. 40.05 (4) (ad). The method to be used shall be specified in the health insurance contract.

History: 1981 c. 96; 1983 a. 27; 1985 a. 29; 1987 a. 27, 107, 356; 1987 a. 403 s. 256; 1989 a. 31, 93, 121, 129, 182, 201, 336, 359; 1991 a. 39, 70, 113, 152, 269, 315, 1993 a. 450, 481; 1995 a. 289; 1997 a. 27, 155, 202, 237, 252; 1999 a. 32, 95, 115, 155; 2001 a. 16, 38, 104; 2003 a. 33; 2005 a. 194.

Monies appropriated to the Public Employee Trust Fund are not "state funds"; the legislature may not restrict the use of those funds by a statute governing the use of "state or local funds." The restrictions on the use of "state and local" funds for abortions under s. 20.927 do not apply to health plans offered under this section. OAG 1–95

40.52 Health care benefits. (1) The group insurance board shall establish by contract a standard health insurance plan in which all insured employees shall participate except as otherwise provided in this chapter. The standard plan shall provide:

(a) A family coverage option for persons desiring to provide for coverage of all eligible dependents and a single coverage option for other eligible persons.

(b) Coverage for expenses incurred by the installation and use of an insulin infusion pump, coverage for all other equipment and supplies used in the treatment of diabetes, including any prescription medication used to treat diabetes, and coverage of diabetic self-management education programs. Coverage required under this paragraph shall be subject to the same exclusions, limitations, deductibles, and coinsurance provisions of the plan as other covered expenses, except that insulin infusion pump coverage may be limited to the purchase of one pump per year and the plan may require the covered person to use a pump for 30 days before purchase.

(2) Health insurance benefits under this subchapter shall be integrated, with exceptions determined appropriate by the group insurance board, with benefits under federal plans for hospital and health care for the aged and disabled. Exclusions and limitations with respect to benefits and different rates may be established for persons eligible under federal plans for hospital and health care for the aged and disabled in recognition of the utilization by persons within the age limits eligible under the federal program. The plan may include special provisions for spouses and other dependents covered under a plan established under this subchapter where one spouse is eligible under federal plans for hospital and health care for the aged but the others are not eligible because of age or other reasons. As part of the integration, the department may, out of premiums collected under s. 40.05 (4), pay premiums for the federal health insurance.

(3) The group insurance board, after consulting with the board of regents of the University of Wisconsin System, shall establish the terms of a health insurance plan for graduate assistants, and for employees-in-training designated by the board of regents, who are employed on at least a one-third full-time basis and for teachers who are employed on at least a one-third full-time basis by the University of Wisconsin System with an expected duration of employment of at least 6 months but less than one year.

(3m) The group insurance board, after consulting with the board of directors of the University of Wisconsin Hospitals and Clinics Authority, shall establish the terms of a health insurance plan for graduate assistants, and for employees-in-training designated by the board of directors, who are employed on at least a one-third full-time basis with an expected duration of employment of at least 6 months.

(4) The group insurance board shall establish the terms of health insurance plans for eligible employees, as defined under s. 40.02 (25) (b) 9. and 11., who elect coverage under s. 40.51 (7) or (10).

History: 1981 c. 96, 381; 1983 a. 429; 1987 a. 107; 1987 a. 327, 356; 1987 a. 403 s. 256; 1989 a. 13; 1991 a. 45; 1995 a. 216; 2001 a. 82.

The denial of a homosexual employee's request for family coverage for herself and her companion did not violate equal protection or the prohibition of discrimination on the basis of marital status, sexual orientation or gender under s. 111.321. *Phillips v. Wisconsin Personnel Commission*, 167 Wis. 2d 205, 482 N.W.2d 121 (Ct. App. 1992).

The insurance subrogation law permitting a subrogated insurer to be reimbursed only if the insured has been made whole applies to the state employee health plan. *Leonard v. Dusek*, 184 Wis. 2d 267, 516 N.W.2d 463 (Ct. App. 1994).

Barring spouses who are both state employees from each electing family medical coverage does not discriminate on the basis of marital status. *Kozich v. Employee Trust Funds Board*, 203 Wis. 2d 363, 553 N.W.2d 830 (Ct. App. 1996), 95–2219.

Barring spouses who are both public employees from each electing family medical coverage is excepted from the prohibition under ch. 111 against discrimination based on marital status. *Motola v. LIRC*, 219 Wis. 2d 588, 580 N.W.2d 297 (1998), 97–0896.

40.53 Pharmacy benefits purchasing pool. (1) In this section:

(a) "Brand name" has the meaning given in s. 450.12 (1) (a).

(b) “Eligible party” means an employer, other than the state, or a person in this state.

(c) “Generic name” has the meaning given in s. 450.12 (1) (b).

(d) “Prescription drug” has the meaning given in s. 450.01 (20).

(2) The group insurance board shall develop a purchasing pool for pharmacy benefits that uses a preferred list of covered prescription drugs. The pool shall consist of the state and any eligible party that satisfies the conditions established under sub. (3) for joining the pool. The group insurance board shall seek to develop the preferred list of covered prescription drugs under an evidence-based analysis that first identifies the relative effectiveness of prescription drugs within therapeutic classes for particular diseases and conditions and next identifies the least costly prescription drugs, including prescription drugs with generic names that are alternatives to prescription drugs with brand names, among those found to be equally effective.

(3) The group insurance board shall propose conditions that an eligible party must satisfy to join the purchasing pool established under sub. (2).

History: 2003 a. 33.

40.55 Long-term care coverage. (1) Except as provided in sub. (5), the state shall offer, through the group insurance board, to eligible employees under s. 40.02 (25) (bm) and to state annuitants long-term care insurance policies which have been approved for sale in this state by the office of the commissioner of insurance and which have been approved for offering under contracts established by the group insurance board if the insurer requests that the policy be offered and the state shall also allow an eligible employee or a state annuitant to purchase those policies for his or her spouse or parent.

(2) For any long-term care policy offered through the group insurance board, the insurer may impose underwriting considerations in determining the initial eligibility of persons to cover and what premiums to charge.

(4) The group insurance board may charge a fee to each insurer whose policy is offered under this section, but the fee may not exceed the direct costs incurred by the group insurance board in offering the policy.

(5) An eligible state employee who elects insurance coverage with a county under s. 978.12 (6) may not elect coverage under this section.

History: 1987 a. 356; 1989 a. 31; 1991 a. 152.

SUBCHAPTER V

DISABILITY BENEFITS

40.61 Income continuation coverage. (1) The procedures and provisions pertaining to enrollment, premium transmitted and coverage of eligible employees for income continuation benefits shall be established by contract or rule except as otherwise specifically provided by this chapter.

(2) Except as provided in sub. (4), any eligible employee may become covered by income continuation insurance by electing coverage within 30 days of initial eligibility, to be effective as of the first day of the month which begins on or after the date the application is received by the employer, or by electing coverage within 30 days of initially becoming eligible for a higher level of employer contribution towards the premium cost to be effective as of the first day of the month following the date the application is received by the employer for teachers employed by the university and effective as of the following April 1 for all other employees. Any employee who does not so elect at one of these times, or who subsequently cancels the insurance, may not thereafter become insured unless the employee furnishes evidence of insurability under the terms of the contract, or as otherwise provided by rule for employees under sub. (3), at the employee’s own expense

or obtains coverage subject to contractual waiting periods if contractual waiting periods are provided for by the contract or by rule for employees under sub. (3). An employee who furnishes satisfactory evidence of insurability under the terms of the contract shall become insured as of the first day of the month following the date of approval of evidence. The method to be used shall be determined by the group insurance board under sub. (1).

(3) Any employer under s. 40.02 (28), other than the state, may offer to all of its employees an income continuation insurance plan through a program offered by the group insurance board. Notwithstanding sub. (2) and ss. 40.05 (5) and 40.62, the department may by rule establish different eligibility standards or contribution requirements for such employees and employers and may by rule limit the categories of employers which may be included as participating employers under this subchapter.

(4) An eligible state employee who elects insurance coverage with a county under s. 978.12 (6) may not elect coverage under this section.

(5) If, as a result of employer error, an eligible employee has not filed an application with the department as required under sub. (2) or (3) or made premium contributions as required under s. 40.05 (5) within 60 days after becoming eligible for income continuation insurance coverage, the employee is considered not to be insured for that coverage. The employee may become insured by filing a new application under sub. (2) or (3) within 30 days after the employee receives from the employer written notice of the error. An employee is not required to furnish evidence of insurability to become insured under this subsection. An employee becomes insured under this subsection on the first day of the first month beginning after the date on which the employer receives the employee’s new application under sub. (2) or (3) and upon approval by the department.

History: 1981 c. 96; 1985 a. 29; 1987 a. 309; 1989 a. 31; 2005 a. 402.

40.62 Income continuation insurance benefits.

(1) The group insurance board shall establish an income continuation insurance plan providing for full or partial payment of the financial loss of earnings incurred as a result of injury or illness with separate provisions for short-term insurance with a benefit duration of no more than one year and long-term insurance covering injury or illness of indefinite duration. Employees insured under the plan shall be eligible for benefits upon exhaustion of accumulated sick leave and completion of the elimination period established by the group insurance board.

(1m) Notwithstanding sub. (1), no employee may be required to use more than 130 days of accumulated sick leave unless required to exhaust accumulated sick leave under s. 40.63 (1) (c).

(2) Sick leave accumulation shall be determined in accordance with rules of the department, any collective bargaining agreement under subch. I or V of ch. 111, and ss. 13.121 (4), 36.30, 230.35 (2), 233.10, 757.02 (5) and 978.12 (3).

History: 1981 c. 96; 1987 a. 309; 1989 a. 13, 31; 1995 a. 27.

40.63 Disability annuities. (1) Any participating employee is entitled to a disability annuity from the Wisconsin retirement system, beginning on the date determined under sub. (8) if, prior to attaining his or her normal retirement date, all of the following apply:

(a) The employee has earned at least one-half year of creditable service in each of at least 5 calendar years not including any calendar year preceding by more than 7 calendar years the year in which the application for the disability annuity is received by the department, or has earned a total of at least 5 years of creditable service during that period of time, or, if the disability was a result of employment as a participating employee for an employer, last rendered services to a participating employer not more than 2 years prior to the date the application for the disability annuity is received by the department.

(b) The employee becomes unable to engage in any substantial gainful activity by reason of a medically determinable physical or

mental impairment which can be expected to result in death or to be of long-continued and indefinite duration.

(c) The employee is not entitled to any earnings from the employer and the employer has certified that it has paid to the employee all earnings to which the employee is entitled, that the employee is on a leave of absence and is not expected to resume active service, or that the employee's participating employment has been terminated, because of a disability as described in par. (b) and as a consequence the employee is not entitled to any earnings from the employer. In this paragraph, "earnings" does not include bonus compensation to which the employee was entitled under s. 25.156 (7) (a), 1997 stats.

(d) Except as provided in sub. (8) (h) 2., the employee is certified in writing by at least 2 licensed and practicing physicians approved or appointed by the department, to be disabled as described in par. (b).

(2) For purposes of sub. (1) a participant shall be considered a participating employee only if no other employment which is substantial gainful activity has intervened since service for the participating employer terminated and if the termination of active service for the participating employer was due to disability. For purposes of sub. (1) an elected official shall be considered to have terminated active service due to disability if a disability is determined, under sub. (1), to exist at the end of the elected official's term of office.

(3) For purposes of sub. (1) (a) only, if a participant was previously receiving a disability annuity which was terminated, the participant is deemed to have received full creditable service for any month for which the previous disability annuity was paid.

(4) Notwithstanding sub. (1) (b), a protective occupation participant is not disqualified from receiving a disability annuity if the participant has accumulated 15 or more years of creditable service and would attain age 55 in 60 months or less after the occurrence of disability and the medical evidence, as provided in sub. (1), establishes a disability to the extent that the participant can no longer efficiently and safely perform the duties required by the participant's position, and that the condition is likely to be permanent.

(5) The department shall make a report based on the evidence prescribed in subs. (1) to (4) as to whether a disability benefit shall be granted and the department shall submit the report to the teachers retirement board for teacher participants and to the Wisconsin retirement board for participants other than teachers. A copy of the report and notice of the date that the report was presented, or will be presented, to the appropriate board and the board's name, shall be mailed to the applicant and to the applicant's former employer. Either the applicant or the employer may request a hearing under s. 227.44 to contest the department's determination by filing a timely appeal with the appropriate board. If a request for a hearing is not timely filed, and the appropriate board does not disapprove the department's determination or request additional information within the time allowed for filing appeals, the report shall be final. If the board requests additional information, the report shall be final 30 days after the board's receipt of the requested information unless the board disapproves the report. If the report is disapproved, notice of the board's action shall be sent to the applicant and the applicant's former employer. Either the applicant or the employer may contest the board's action by submitting a written request for a hearing under s. 227.44 to the appropriate board within 30 days following the date on which the notice of the board's action was mailed to the applicant or the employer.

(6) Any person entitled to payments under this section who may otherwise be entitled to payments under s. 66.191, 1981 stats., may file with the department and the department of workforce development a written election to waive payments due under this section and accept in lieu of the payments under this section payments as may be payable under s. 66.191, 1981 stats., but no person may receive payments under both s. 66.191, 1981 stats., and this section. However any person otherwise entitled to payments under this section may receive the payments, without

waiver of any rights under s. 66.191, 1981 stats., during any period as may be required for a determination of the person's rights under s. 66.191, 1981 stats. Upon the final adjudication of the person's rights under s. 66.191, 1981 stats., if waiver is filed under this section, the person shall immediately cease to be entitled to payments under this section and the system shall be reimbursed from the award made under s. 66.191, 1981 stats., for all payments made under this section.

(7) If an application, by a participant age 55 or over, or by a protective occupation participant age 50 or over, for any disability annuity is disapproved, the date which would have been the disability annuity effective date shall be the retirement annuity effective date if so requested by the applicant within 60 days of the disapproval or, if the disapproval is appealed, within 60 days of final disposition of the appeal.

(8) Disability annuity effective dates and amounts shall be determined in the same manner and shall be subject to the same limitations and options as retirement annuities except that separate actuarial tables may be applied and except that:

(a) The creditable service shall include assumed service between the date the disability occurred, or the last day for which creditable service was earned, if later, and the date on which the participant will reach the participant's normal retirement date. The assumed service shall be prorated if the participant's employment was less than full time.

(b) For purposes of s. 40.23 (2m) (e) and (f) only, the participant is deemed to have attained the participant's normal retirement date on the effective date of the annuity.

(d) If an annuity option other than the normal form is elected, the amount of the normal form disability annuity which is greater than the normal form retirement annuity to which the participant would be entitled under s. 40.23, notwithstanding the minimum age requirement for receiving an annuity, shall be a straight life annuity terminating at the death of the annuitant. The balance of the present value of the disability annuity, after providing for the straight life annuity, shall be applied to provide an annuity in the optional form elected.

(e) The annuity option provided by s. 40.24 (1) (e) may not be elected.

(f) If an employer certifies that an employee's date of termination of employment is being extended past the last day worked due to any payment for accumulated sick leave, vacation or compensatory time, a participating employee may file an application for a disability annuity as if the last day worked were the last day paid. Regardless of the application date for a disability annuity, the date of termination of employment for effective date purposes shall be deemed to be the last day for which the participant was paid, including any payment for accumulated leave, but if a disability annuity applicant whose application has been approved dies before the last day paid, but after the last day worked, the effective date is the date of death.

(g) If processing of an application is delayed more than 12 months beyond the date the application is received by the department because of failure to receive some or all of the evidence required under subs. (1) to (4), the application shall be canceled but the applicant may reapply for a disability benefit if otherwise still eligible.

(h) If an applicant dies prior to the date a decision regarding the approval or disapproval of an application for a disability benefit becomes final under sub. (5), the application is deemed to have been approved prior to the applicant's death if:

1. The applicant was eligible for the disability benefit;
2. The department received an application for the disability benefit in the form approved by the department and at least one written qualifying medical certification required under sub. (1) (d); and
3. The applicant dies on or after the date which would have been the effective date of the disability benefit.

(i) For the purpose of par. (h) an applicant is conclusively presumed not eligible for a disability benefit if the application is based on an alleged disability which was the basis for a previous application which the department denied.

(9) (a) The board may require that any disability annuitant shall be examined by at least one licensed and practicing physician, designated or approved by the board, during any calendar year the annuitant is receiving the annuity. A written report of the examination in a form approved by the department which shall indicate whether or not the annuitant is still disabled as specified in sub. (1) (b), shall be filed with the department. This paragraph and par. (c) shall not apply to any annuitant who has attained the normal retirement date for the annuitant's former participant classification.

(b) If a disability annuitant, prior to attaining the normal retirement date for the annuitant's former participant classification, receives earnings or other earned income from any source whatsoever for personal services, including services performed on a contractual basis, the annuity shall be suspended, except for any amount provided by additional contributions, and no payment shall be payable after the first of the month in which the earnings or earned income received during any calendar year exceed the amount established under sub. (11), except that if payment was being made under sub. (4) the annuity may only be suspended if the annuitant is employed in a law enforcement or fire fighting capacity and then the suspension shall be effective immediately. The suspended amount shall be reinstated on January 1 following the date of suspension, or, if earlier, on the first day of the 2nd month following the termination of personal services. An amount, which is reinstated in any calendar year, other than on January 1 of the calendar year, shall again be suspended for any subsequent month in the calendar year following a month in which the disability annuitant receives any amount of earnings or earned income for personal services. The department may request any earnings or compensation information as it deems necessary to implement the provisions of this paragraph and par. (c).

(c) The disability annuity shall be terminated and no payment shall be payable after the first of the month in which a determination is made by the department that:

1. The written physician's report required in par. (a) indicates that the annuitant has recovered from the disability so the annuitant is no longer disabled to the extent required under sub. (1) (b);
2. The annuitant refuses to submit to an examination under par. (a); or
3. The annuitant refuses to submit information regarding earnings or compensation as requested by the department.

(d) If the department terminates a disability annuity under this subsection, the department shall make a report which shall include the department's determination and the reasons for the determination. The department shall submit the report to the teachers retirement board for teacher participants and to the Wisconsin retirement board for participants other than teachers. A copy of the report and notice of the date that the report was presented, or will be presented to the appropriate board, and the board's name, shall be mailed to the affected annuitant. An annuitant may request a hearing under s. 227.44 to contest the department's determination by filing a timely appeal with the appropriate board. If a request for a hearing is not timely filed, and the appropriate board does not disapprove the department's determination or request additional information within the time allowed for filing appeals, the report shall be final. If the board requests additional information, the report shall be final 30 days after the board's receipt of the requested information unless the board disapproves the department's determination.

(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 pro-

vided 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.

(11) In this section "substantial gainful activity" means employment for which the annual compensation exceeds, for determinations made in the calendar year commencing on January 1, 1982, \$3,600 or, for determinations made in subsequent calendar years, the amount applied under this section in the previous calendar year increased by the salary index and ignoring fractions of the dollar.

History: 1981 c. 96, 386; 1983 a. 141 s. 20; 1983 a. 191 s. 6; 1983 a. 290; 1985 a. 11; 1985 a. 182 s. 57; 1987 a. 303, 372; 1989 a. 13, 166; 1991 a. 39, 152; 1995 a. 27 s. 9130 (4); 1997 a. 3, 69; 1999 a. 9.

Under sub. (1) (c), the employer's failure to certify that it terminated the employee because of a disability was fatal to an application for disability benefits. *State ex. rel Bliss v. Wisconsin Retirement Board*, 216 Wis. 2d 223, 576 N.W.2d 76 (Ct. App. 1998), 97–1639.

40.65 Duty disability and death benefits; protective occupation participants. (2)

(a) This paragraph applies to participants who first apply for benefits before May 3, 1988. Any person desiring a benefit under this section must apply to the department of workforce development, which department shall determine whether the applicant is eligible to receive the benefit and the participant's monthly salary. Appeals from the eligibility decision shall follow the procedures under ss. 102.16 to 102.26. If it is determined that an applicant is eligible, the department of workforce development shall notify the department of employee trust funds and shall certify the applicant's monthly salary. If at the time of application for benefits an applicant is still employed in any capacity by the employer in whose employ the disabling injury occurred or disease was contracted, that continued employment shall not affect that applicant's right to have his or her eligibility to receive those benefits determined in proceedings before the department of workforce development or the labor and industry review commission or in proceedings in the courts. The department of workforce development may promulgate rules needed to administer this paragraph.

(b) 1. This paragraph applies to participants who first apply for benefits under this section on or after May 3, 1988.

2. An applicant for benefits under this section shall submit or have submitted to the department an application that includes written certification of the applicant's disability under sub. (4) by at least 2 physicians, as defined in s. 448.01 (5), who practice in this state and one of whom is approved or appointed by the department, and a statement from the applicant's employer that the injury or disease leading to the disability was duty-related.

3. The department shall determine whether or not the applicant is eligible for benefits under this section on the basis of the evidence in subd. 2. An applicant may appeal a determination under this subdivision to the department of workforce development.

4. In hearing an appeal under subd. 3., the department of workforce development shall follow the procedures under ss. 102.16 to 102.26.

5. The department shall be an interested party in an appeal under subd. 3., and the department shall receive legal assistance from the department of justice, as provided under s. 165.25 (4).

(3) The Wisconsin retirement board shall determine the amount of each monthly benefit payable under this section and its effective date. The board shall periodically review the dollar amount of each monthly benefit and adjust it to conform with the provisions of this section. The board may request any income or benefit information, or any information concerning a person's marital status, which it considers to be necessary to implement this subsection and shall require a participant to submit a certified copy of his or her most recent state or federal income tax return. The board may terminate the monthly benefit of any person who

refuses to submit information requested by the board or who submits false information to the board.

(4) A protective occupation participant is entitled to a duty disability benefit as provided in this section if:

(a) The employee is injured while performing his or her duty or contracts a disease due to his or her occupation;

(b) The disability is likely to be permanent; and

(c) 1. The disability causes the employee to retire from his or her job;

2. The employee's pay or position is reduced or he or she is assigned to light duty; or

3. The employee's promotional opportunities within the service are adversely affected if state or local employer rules, ordinances, policies or written agreements specifically prohibit promotion because of the disability.

(4m) A protective occupation participant who is a state motor vehicle inspector hired on or after January 1, 1968, is not entitled to a duty disability benefit under this section for an injury or disease occurring before May 1, 1990.

(4r) A protective occupation participant who is an emergency medical technician is not entitled to a duty disability benefit under this section for an injury or disease occurring before the date on which the department receives notification of the participant's name as provided in s. 40.06 (1) (d) and (dm).

(4v) A state probation and parole officer who becomes a protective occupation participant on or after January 1, 1999, is not entitled to a duty disability benefit under this section for an injury or disease occurring before January 1, 1999.

(5) (a) The monthly benefit payable to participants who qualify for benefits under s. 40.63 or disability benefits under OASDHI is 80% of the participant's monthly salary adjusted under par. (b) and sub. (6), except that the 80% shall be reduced by 0.5% for each month of creditable service over 30 years or over 25 years for persons who are eligible for benefits under subch. II at the date of application, but not to less than 50% of the participant's monthly salary. For participants who do not qualify for benefits under s. 40.63 or disability benefits under OASDHI, the monthly benefit under this section is 75% of the participant's monthly salary adjusted under par. (b) and sub. (6), except that the 75% shall be reduced by 0.5% for each month of creditable service over 30 years or over 25 years for persons who are eligible for benefits under subch. II on the date of application.

(b) The Wisconsin retirement board shall reduce the amount of a participant's monthly benefit under this section by the amounts under subs. 1. to 6., except that the board may determine not to reduce a participant's benefit because of income related to therapy or rehabilitation. The Wisconsin retirement board may assume that any benefit or amount listed under subs. 1. to 6. is payable to a participant until it is determined to the board's satisfaction that the participant is ineligible to receive the benefit or amount, except that the department shall withhold an amount equal to 5% of the monthly benefit under this section until the amount payable under subd. 3. is determined.

1. Any OASDHI benefit payable to the participant or the participant's spouse or a dependent because of the participant's work record.

2. Any unemployment insurance benefit payable to the participant because of his or her work record.

3. Any worker's compensation benefit payable to the participant, including payments made pursuant to a compromise settlement under s. 102.16 (1). A lump sum worker's compensation payment or compromise settlement shall reduce the participant's benefit under this section in monthly amounts equal to 4.3 times the maximum benefit which would otherwise be payable under ch. 102 for the participant's disability until the lump sum amount is exhausted.

4. Any disability and retirement benefit payable to the participant under this chapter, or under any other retirement system, that

is based upon the participant's earnings record and years of service. A reduction under this subdivision may not be greater in amount than the amount of disability or retirement benefit received by the participant. If the participant is not eligible for a retirement benefit because he or she received a lump sum payment or withdrew his or her contributions on or after the date the participant became eligible to receive a benefit under this section, the amount received or withdrawn shall reduce the participant's benefit under this section in the amount of benefit that would be payable if, on the date the amount was received or withdrawn, the full amount received or withdrawn was applied under s. 40.23 (2m) (d) as additional employee contributions credited to the participant's account.

5. All earnings payable to the participant from the employer under whom the duty disability occurred.

6. All earnings payable to the participant from an employer, other than the employer under whom the duty disability occurred, and all income from self-employment, the total of such earnings and income shall reduce the participant's benefit as follows:

a. For the amount of the total that is less than 40% of the participant's monthly salary, one-third of such amount;

b. For the amount of the total that is from 40% to 80% of the participant's monthly salary, one-half of such amount; and

c. For the amount of the total that is more than 80% of the participant's monthly salary, two-thirds of such amount.

(c) The Wisconsin retirement board may not reduce a participant's benefit because of income or benefits that are attributable to the earnings or work record of the participant's spouse or other member of the participant's family, or because of income or benefits attributable to an insurance contract, including income continuation programs.

(6) The Wisconsin retirement board shall adjust the monthly salary of every participant receiving a benefit under this section using the salary index for the previous calendar year as follows:

(a) For the purposes of sub. (5) (b) 6., annually on January 1 until the participant's death;

(b) For the purposes of sub. (5) (a), if the participant is receiving an annuity under s. 40.63 (1), annually on January 1 until the participant's death; and

(c) For the purposes of sub. (5) (a), if the participant is not receiving an annuity under s. 40.63 (1), annually on January 1 until the first January 1 after the participant's 60th birthday. Beginning on the January 1 after the participant's 60th birthday the participant's monthly salary shall be increased annually in a percentage amount equal to the percentage amount of dividend awarded under s. 40.27 (2) until the participant's death. Notwithstanding s. 40.27 (2), any benefits payable under this section are not subject to distribution of annuity reserve surpluses.

(7) (a) This paragraph applies to benefits based on applications filed before May 3, 1988. If a protective occupation participant dies as a result of an injury or a disease for which a benefit is paid or would be payable under sub. (4), and the participant is survived by a spouse or an unmarried child under age 18, a monthly benefit shall be paid as follows:

1. To the surviving spouse, if the spouse was married to the participant on the date the participant was disabled within the meaning of sub. (4), one-third of the participant's monthly salary as reflected at the time of death until the surviving spouse marries again.

2. To the guardian of a surviving unmarried child under age 18, \$15 per child until the child marries, dies or reaches 18 years of age.

3. The total monthly amount paid under subs. 1. and 2. may not exceed 65% of the participant's monthly salary as reflected at the time of death. Any reduction of benefits caused by such limitation shall be done on a proportional basis.

(am) This paragraph applies to benefits based on applications filed on or after May 3, 1988. If a protective occupation partici-

pant dies as a result of an injury or a disease for which a benefit is paid or would be payable under sub. (4), and the participant is survived by a spouse or an unmarried child under the age of 18, a monthly benefit shall be paid as follows:

1. To the surviving spouse until the surviving spouse remarries, if the spouse was married to the participant on the date that the participant was disabled under sub. (4), 50% of the participant's monthly salary at the time of death, but reduced by any amount payable under sub. (5) (b) 1. to 6.

2. To a guardian for each of that guardian's wards who is an unmarried surviving child under the age of 18, 10% of the participant's monthly salary at the time of death, payable until the child marries, dies or reaches the age of 18, whichever occurs first. The marital status of the surviving spouse shall have no effect on the payments under this subdivision.

3. The total monthly amount paid under subds. 1. and 2. may not exceed 70% of the participant's monthly salary at the time of death reduced by any amounts under sub. (5) (b) 1. to 6. that relate to the participant's work record.

4. Benefits payable under this paragraph shall be increased each January 1 by the salary index determined for the prior year.

(ar) 1. This paragraph applies to benefits based on applications filed on or after May 12, 1998. If a protective occupation participant, who is covered by the presumption under s. 891.455, dies as a result of an injury or a disease for which a benefit is paid or would be payable under sub. (4), and the participant is survived by a spouse or an unmarried child under the age of 18, a monthly benefit shall be paid as follows:

a. To the surviving spouse until the surviving spouse remarries, if the surviving spouse was married to the participant on the date that the participant was disabled under sub. (4), 70% of the participant's monthly salary at the time of death, but reduced by any amount payable under sub. (5) (b) 1. to 6.

b. If there is no surviving spouse or the surviving spouse subsequently dies, to a guardian for each of that guardian's wards who is an unmarried surviving child under the age of 18, 10% of the participant's monthly salary at the time of death, payable until the child marries, dies or reaches the age of 18, whichever occurs first.

2. Benefits payable under this paragraph shall be increased each January 1 by the salary index determined for the prior year.

(b) Any person entitled to a benefit under both this subsection and ch. 102 because of the death of the same participant, shall have his or her benefit under this subsection reduced in an amount equal to the death benefit payable under ch. 102.

(9) This section is applicable to protective occupation participants who apply for a benefit under this section on or after July 1, 1982. A participant may not apply for a benefit under this section if he or she is receiving a benefit under s. 66.191, 1981 stats., on July 1, 1982.

History: 1981 c. 278; 1983 a. 9; 1983 a. 141 s. 20; 1983 a. 191 s. 6; 1983 a. 255; 1985 a. 332 s. 251 (1); 1987 a. 363; 1989 a. 240, 357; 1995 a. 27 s. 9130 (4); 1997 a. 3, 39, 173, 237.

Cross-reference: See s. 891.45 for provision as to presumption of employment-connected disease for certain municipal fire fighters.

Cross Reference: See also LIRC and ss. ETF 52.01 and DWD 80.31, Wis. adm. code.

The Wisconsin Retirement Board may not reduce duty disability benefits under sub. (5) (b) 3. for worker's compensation benefits that are paid to a participant before the duty disability payments commence, and may do so only for worker's compensation not yet paid. *Coutts v. Wisconsin Retirement Board*, 209 Wis. 2d 655, 563 N.W.2d 917 (1997), 95-1905.

The Retirement Board is authorized to promulgate administrative rules interpreting sub. (3). *Kuester v. Wisconsin Retirement Board*, 2004 WI App 10, 269 Wis. 2d 462, 674 N.W.2d 877, 03-0056.

SUBCHAPTER VI

SURVIVOR BENEFITS

40.70 Life insurance coverage. (1) Except as provided in sub. (11), each eligible employee of an employer shall be insured

under the group life insurance plan provided under this subchapter if all of the following apply:

(a) The employer is a participating employer under the Wisconsin retirement system and was included in the group life insurance program by s. 40.20 (5m), 1979 stats., or the governing body of the employer has adopted a resolution in a form prescribed by the department to make coverage available to its employees or is the state. Coverage may also be extended by rule to employees under other retirement systems if the employer adopts a resolution as specified in this paragraph. A certified copy of the resolution shall be filed with the department and the resolution takes effect on the first day of the 4th month beginning after the date of filing. An employer may provide group life insurance for its employees through separate contracts in addition to, or in lieu of, the group life insurance provided by the department under this subchapter.

(b) The employee files with the department an application, to be effective on a date fixed by the department, for one or more of the types of coverage established under this subchapter. The group insurance board may provide a different method of enrollment than provided under this subsection.

(c) The employee pays the employee contribution toward the life insurance premium under s. 40.05 (6).

(2) A resolution adopted under sub. (1) (a) takes effect only if the department determines that at least 50% of the eligible employees of that employer will be covered at the time that the resolution is effective. The department's determination shall be based on the employer's prior year-end report of the number of employees participating in the Wisconsin retirement system or, if the employer was not a participating employer in the prior year, on the number of employees who, on or before the 15th day of the month immediately preceding the effective date of the resolution, have applied for group life insurance coverage under this subchapter. If the department nullifies a resolution based on insufficient participation, the employer may not file another resolution under sub. (1) (a) during the first 6 months after the date of the previous filing.

(3) Employers may adopt resolutions providing all the coverages provided under this subchapter or provided by contract or may identify in the resolution only specified coverages that are authorized by contract to be offered separately. Employees may file an application under sub. (1) (b) for the amount of coverage provided under s. 40.72 (1) and for any other coverage offered by their employer. The department shall determine the method of administration and the procedure for collection of premiums and employer costs.

(4) (a) The governing body of any employer may do any of the following:

1. Change the coverage that it makes available to its employees under s. 40.72 (2) or (3) by adopting an amended resolution and filing a certified copy of the amended resolution with the department.

2. Withdraw from making coverage under this subchapter available to its employees by adopting a withdrawal resolution and filing a certified copy of the withdrawal resolution with the department.

3. Nullify its amended resolution or withdrawal resolution at any time before it becomes effective by adopting a nullifying resolution and filing a certified copy of the nullifying resolution with the department.

(b) Except as provided in sub. (5), amended resolutions and withdrawal resolutions take effect on the first day of the 4th month beginning after the date of filing. Nullifying resolutions take effect on the date of filing.

(c) If a withdrawal resolution becomes effective, the employer may not file another resolution under sub. (1) (a) during the first 12 months after the effective date of the withdrawal resolution.

(5) The department may accept or reject an amended resolution, or a resolution under sub. (1) (a) that is filed after the employ-

er's withdrawal resolution becomes effective, and may charge the employer for any postretirement insurance liability.

(6) Except as provided in sub. (7m), any employee who has not applied for coverage under sub. (1) within 6 months after becoming eligible for coverage or any employee whose insurance terminates under sub. (8) shall not thereafter become insured for that coverage unless prior to the attainment of age 55 the employee furnishes evidence of insurability satisfactory to the insurer, at his or her own expense. If the evidence is approved, the employee shall become insured on the first day of the first month beginning after the approval.

(7m) If, as a result of employer error, an employee has not filed an application with the department as required under sub. (1) (b) or made premium contributions as required under sub. (1) (c) within 60 days after becoming eligible for group life insurance coverage, the employee is considered not to be insured for that coverage. The employee may become insured by filing a new application under sub. (1) (b) within 30 days after the employee receives from the employer written notice of the error. An employee is not required to furnish evidence of insurability to become insured under this subsection. An employee becomes insured under this subsection on the first day of the first month beginning after the date on which the employer receives the employee's new application under sub. (1) (b).

(8) An insured employee may at any time cancel one or more of the types of life insurance coverage provided under this subchapter by filing a cancellation form with the employing office. The cancellation form shall be transmitted immediately to the department. The cancellation shall be effective and the insurance shall cease at the end of the calendar month which begins after the cancellation form is received by the appropriate office.

(9) The life insurance shall terminate as provided in the contract which shall also provide an option for an employee to convert insurance coverage upon termination of employment if covered by the insurance during the entire 6 months preceding termination or if covered by the insurance from the initial effective date for that employer, to the date of termination.

(10) The group insurance board may provide for the continuation or suspension of insurance coverage during any month in which no earnings are received during a leave of absence.

(11) An eligible state employee shall not be insured under the group life insurance provided under this subchapter if the employee elects insurance coverage with a county under s. 978.12 (6).

History: 1981 c. 96; 1989 a. 13, 31, 182; 1991 a. 152.

Cross Reference: See also s. ETF 60.31, Wis. adm. code.

40.71 Death benefit eligibility. The following described persons are entitled to death benefits from the Wisconsin retirement system, in the form and at the times specified:

(1) The beneficiary of any participant or of any annuitant on the date of death of the participant or annuitant. For purposes of this subsection:

(a) A participant is deemed a participating employee on the date of death even though the participant is then an applicant for a retirement or disability annuity, except as provided by s. 40.63 (8) (h), if the participant's application was received by the board within 30 days after the participant ceased to be a participating employee and the participant would have been entitled to the annuity had the participant lived.

(b) If the date of death is less than one year after the last day for which earnings were paid, a participant is deemed a participating employee on leave of absence, notwithstanding the fact that no formal leave of absence is in effect, if the participating employer for which the participant last performed services as a participating employee has not filed notice of the termination of employment prior to the employee's death.

(c) If the death of a participating employee on leave of absence, other than a leave for purposes of military service, arises from

employment by any employer other than a participating employer, employment is deemed to have terminated and the participant shall not be considered a participating employee on the date of his or her death.

(d) Every participant is deemed an annuitant immediately upon the effective date of the participant's annuity, or the date the application is received by the department if the participant is living on that date, whichever is later.

(e) Any annuitant whose annuity is terminated shall cease to be an annuitant as of the last day of the month preceding the last day on which the annuity is payable.

(2) Any death benefit may be paid as a beneficiary annuity, subject to s. 40.73 (3), or as a single cash sum as specified by the beneficiary in the application for the death benefit unless the participant prohibited payment of a single cash sum in a written notice received by the department prior to the participant's death. A prohibition on payment of a single cash sum shall not be effective if the monthly amount of the annuity would be less than the amount determined under s. 40.25 (1) (a) or if the beneficiary is the participant's estate or a trust in which the beneficiary has a beneficial interest.

(3) Whenever any death benefit is payable in a single cash sum, it shall be paid only after receipt by the department of the following:

(a) A copy of the death certificate of the participant or annuitant;

(b) A written application of the beneficiary for the benefit; and

(c) Any additional evidence deemed necessary or desirable by the department.

History: 1981 c. 96; 1987 a. 309.

Nothing in s. 40.73 creates an entitlement in the beneficiary to the annuity-value single cash sum benefit as of the date of death even though the value of the single cash sum benefit is calculated as of the date of death. A beneficiary does not acquire a property interest in a single cash sum death benefit under s. 40.73 (1) (c) until the beneficiary applies for a death benefit as required by sub. (3). *Fazio v. Department of Employee Trust Funds*, 2006 WI 7, 287 Wis. 2d 106, 708 N.W.2d 326, 04-0064.

40.72 Life insurance benefits. (1) Except as provided in sub. (2), (3), (3m), (8) or (10), the amount of group life insurance of an insured employee under age 70 shall be \$1,000 of insurance for each \$1,000 or part of \$1,000 of the employee's annual earnings during the prior calendar year, notwithstanding any limitation of amount that may otherwise be provided by law. For persons covered initially the earnings shall be a projection on an annual basis of the compensation at the time of coverage until the date determined by the group insurance board for establishing new annual amounts of insurance.

(2) Except as provided by sub. (3), the amount of life insurance for any insured eligible employee who is 70 years of age or older or insured retired eligible employee under sub. (4) who is 65 years of age or over shall be the amount as computed under sub. (1) reduced by 25% of that amount on each birthday of the employee commencing with the employee's 65th birthday, with a maximum reduction of 75%.

(3) The maximum reduction in the amount of insurance for any insured employee to whom this subsection applies by an election under s. 40.70 (3) and for any insured state employee shall be 50%.

(3m) The group insurance board may, by contract, limit the amount of group life insurance for any insured employee who becomes insured by electing coverage under s. 40.70 (6).

(4) The amount of life insurance for any insured employee who was either a participating employee before January 1, 1990, or who has been covered under the group life insurance plan in at least 5 calendar years after 1989, who terminates employment shall be the same as if the employee had not terminated employment and earnings had continued at the same amount as at the time of termination, except as provided in subs. (2) and (3) and s. 40.70 (3), if any of the following applies on the date of termination:

(a) The employee meets all of the requirements for receiving an immediate annuity except the filing of an application.

(b) The sum of the employee's creditable service on January 1, 1990, and the number of calendar years after 1989 in which the employee has been covered under the group life insurance plan equals at least 20 years.

(c) The employee's number of years of service with the participating employer by whom the employee was employed immediately before termination equals at least 20 years.

(4g) Any individual who became an employee of the state under chapter 90, laws of 1973, section 546, as affected by chapter 333, laws of 1973, section 189b, may use service as a member of the Milwaukee County employee's retirement system to meet any service requirements under this subchapter.

(4r) At any time after an insured employee's amount of life insurance is reduced under subs. (2) and (3) and life insurance premiums are no longer required under s. 40.05 (6) (b), the employee may convert the present value of the life insurance to pay the premiums for health or long-term care insurance provided under subch. IV, but only if the department determines that the value of the conversion is exempt from taxation under the internal revenue code.

(5) The amount of insurance specified under sub. (4) shall be adjusted when the person again becomes an employee of an employer participating in the group life insurance plan and while employed again the person shall pay premiums under s. 40.05 (6) for the insurance.

(6) The amount of insurance of an employee who retires on disability annuity shall be the same as if the employee had not retired and his or her earnings had continued in the same amount as at the time of his or her retirement, except as provided by subs. (2) and (3).

(7) During a period of disability in which premiums are waived under the terms of the insurance contract the amount of insurance shall be the same as if the employee had not become disabled and earnings had continued at the same amount as at the time of becoming disabled, and the contract may provide that the insurance continues during the continuance of the disability even if the person ceases to be an employee.

(8) The life insurance in effect during the previous year shall not be reduced during subsequent consecutive years of eligible employment with the same employer unless the employee elects to have the amount of life insurance recomputed under subs. (1) to (3) or cancels coverage. The election shall be made under procedures established by the department. This subsection is subject to the limitations of subs. (2) and (3).

(9) In addition to the insurance provided under sub. (1), insurance may be provided against accidental death and dismemberment as defined by the group insurance board in accordance with benefit schedules established by contract.

(10) Each insured state employee, and each insured employee to whom this subsection applies by an election under s. 40.70 (3), who is under 70 years of age, or 65 years of age if retired, shall be provided an amount of group life insurance in addition to that provided under sub. (1) equal to 100% of the employee's earnings rounded to the next higher \$1,000, if earnings are not in even \$1,000 increments. The employee may cancel, in accord with the procedures specified by s. 40.70, the amount of additional insurance provided under this subsection.

History: 1981 c. 96, 386; 1985 a. 332 s. 251 (3); 1989 a. 182; 1991 a. 152; 1993 a. 490.

Cross Reference: See also ss. [ETF 60.31](#) and [60.60](#), Wis. adm. code.

40.73 Death benefits. (1) The amount of the Wisconsin retirement system death benefit shall be:

(a) Upon the death of a participant, other than an annuitant or a participating employee, the sum of the additional and employee required contribution accumulations credited to the participant's account on the beneficiary annuity effective date or, in the case of

a lump sum payment, the first day of the month in which the death benefit is approved. In addition:

1. For teacher participants who were members of the state teachers retirement system or the Milwaukee teachers retirement fund on June 30, 1966, the amount shall be increased by the employer contribution accumulation credited to the participant's account on or prior to June 30, 1973, plus interest at the effective rate subsequently credited to the accumulations.

2. For participants who were participants of the Wisconsin retirement fund on or prior to December 31, 1965, the amount shall be increased by the employer contribution accumulation credited to the participant's account on December 31, 1965, plus interest at the effective rate subsequently credited to the accumulations.

(am) Upon the death of a participating employee, except as otherwise provided by par. (c), the sum of all of the following accumulations, including any interest credited to the accumulations, that are credited to the participant's account on the beneficiary annuity effective date or, in the case of a lump sum payment, the first day of the month in which the death benefit is approved:

1. Additional contributions.

2. Accumulated contributions to purchase other governmental service under s. 40.285 (2) (b) or 40.25 (7), 2001 stats.

3. Twice the employee required contributions, after first subtracting the accumulations under subd. 2., including interest on the accumulations.

(b) Upon the death of an annuitant, in addition to any amounts payable by virtue of the annuity option elected by an annuitant, the amount determined under par. (a) for contributions made under s. 40.05 (1) subsequent to the effective date of the annuity, or additional contributions not applied to provide an annuity, provided the amounts have not been previously paid out as a lump sum under s. 40.25.

(c) Upon the death of a participating employee who, prior to death, met the applicable minimum age under s. 40.23 (1) (a) (intro.), if the beneficiary to whom a death benefit is payable is a natural person, or a trust in which the natural person has a beneficial interest, the present value on the day following the date of death of the life annuity to the beneficiary which would have been payable if the participating employee had been eligible to receive a retirement annuity, computed under s. 40.23 or 40.26, beginning on the date of death and had elected to receive the annuity in the form of a joint and survivor annuity providing the same amount of annuity to the surviving beneficiary as the reduced amount payable during the participant's lifetime. If there is more than one beneficiary the amount of the annuity and its present value will be determined as if the oldest of the beneficiaries were the sole beneficiary. If the death benefit payable to the beneficiary under this paragraph would be less than the amount determined under par. (am) the death benefit shall be payable under par. (am) and this paragraph shall not be applicable to the beneficiary. An annuitant receiving an annuity only under s. 40.24 (1) (f), which annuity was an immediate annuity, shall be deemed a participating employee for purposes of this paragraph only, but the amount payable under s. 40.24 (1) (f) shall not be changed.

(d) Increased, upon the death of a participant who had elected the additional benefit provided by s. 42.81 (14), 1979 stats., and continued making the contributions provided for in s. 42.81 (14), 1979 stats., and was eligible for the benefit on December 15, 1988, by an amount and for a period determined by the actuary and approved by the board as being appropriate to the level of contributions provided for in s. 42.81 (14), 1979 stats., or any lower level of contributions, as determined by the actuary and approved by the board. The board may require that the payment of benefits under an insurance contract be paid in lieu of any benefits provided under this paragraph, but only if the benefits under the insurance contract are at least equal to the benefits that would

otherwise have been paid under this paragraph on the date on which the insurance contract went into effect.

(e) Decreased by the balance in the memorandum account established under s. 40.26 (2) (b) except when the death benefit amount is determined under par. (c) and the retirement annuity would have been computed under s. 40.26.

(2) (a) Upon the death, prior to the expiration of the guarantee period, of an annuitant receiving an annuity which provides a guaranteed number of monthly payments, monthly payments shall be continued until payments have been made for the guaranteed number of months. Any beneficiary under this paragraph may elect at any time to receive the then present value of the annuity, including monthly interest at the assumed benefit rate for each full month between the termination of annuity payments and the month in which the single sum payment is approved, in a single sum.

(b) In lieu of the continuation of monthly payments under par. (a), the then present value of the annuity shall be paid as a death benefit under sub. (1) if:

1. The estate of the annuitant is the beneficiary;
2. No beneficiary of the annuitant survives;
3. The death of the beneficiary occurs after having become entitled to receive payments under par. (a), but prior to the end of the period guaranteed;
4. The amount of the monthly payments to the beneficiary, including any amount payable under s. 40.27, is less than the amount determined under s. 40.25 (1) (a); or
5. At the death of the annuitant the remainder of the period for which payments are guaranteed is less than 12 months.

(3) (a) A death benefit may be paid as an annuity for the life of the beneficiary, if the amount of the death benefit is sufficient to provide a beneficiary annuity in the normal form at least equal to the amount determined under s. 40.25 (1) (a) and the beneficiary or the participant has elected to have the death benefit paid as a beneficiary annuity.

(c) Whenever any death benefit is payable in the form of an annuity, the annuity may begin on the day following the date of death of the participant or annuitant if the department has received a copy of the death certificate of the participant or annuitant, and a written application of the beneficiary for the benefit, subject to the same restrictions on effective dates as set forth for retirement annuities.

(d) The amount of any beneficiary annuity shall be that which can be provided from the death benefit, determined in accordance with the actuarial tables in effect on the effective date of the annuity.

(e) Any beneficiary who is eligible to receive a beneficiary annuity may elect to receive the annuity in any of the optional annuity forms provided for retirement annuities, other than an annuity under s. 40.24 (1) (c) or any annuity payable over the joint life expectancies of the beneficiary and another person.

(f) Any beneficiary between ages 18 and 21 or the legal or natural guardian of a minor beneficiary may, in lieu of a life annuity, elect that the death benefit be paid in the form of a temporary life annuity, beginning on the day following the date of death of the participant or annuitant and ending with the monthly payment immediately prior to the beneficiary's 21st birthday, and a final payment, payable one month after the termination of the temporary annuity, in the amounts specified in the application, provided the amounts can be provided from the death benefit, on the basis of the actuarial tables in effect on the date of initial approval of the annuity. A beneficiary, prior to the final payment, may, if the amount of the final payment is sufficient to provide an immediate beneficiary annuity in the normal form of at least an amount equal to the amount determined under s. 40.25 (1) (a) monthly, elect to receive in lieu of the final payment an annuity commencing on the day following the date of termination of the temporary annuity,

determined on the basis of the actuarial tables in effect on the date of initial approval of the annuity.

History: 1981 c. 96; 1983 a. 141, 290; 1987 a. 309; 1989 a. 110, 166; 1995 a. 302, 414; 1997 a. 58; 1999 a. 11, 12; 2005 a. 154.

Whatever effect the Marital Property Act, ch. 766, may have with respect to property rights between spouses, it has no effect on the Board's determination of a beneficiary under ch. 40. *Jackson v. Employee Trust Funds Board*, 230 Wis. 2d 677, 602 N.W.2d 543 (Ct. App. 1999), 98–3063.

The board's consistent interpretation of "Mr. & Mrs." beneficiary designations as relating to the identity of the beneficiaries on the date of the designation, was reasonable. *Jackson v. Employee Trust Funds Board*, 230 Wis. 2d 677, 602 N.W.2d 543 (Ct. App. 1999), 98–3063.

Nothing in s. 40.73 creates an entitlement in the beneficiary to the annuity—value single cash sum benefit as of the date of death even though the value of the single cash sum benefit is calculated as of the date of death. A beneficiary does not acquire a property interest in a single cash sum death benefit under s. 40.73 (1) (c) until the beneficiary applies for a death benefit as required by sub. (3). *Fazio v. Department of Employee Trust Funds*, 2006 WI 7, 287 Wis. 2d 106, 708 N.W.2d 326, 04–0064.

40.74 Beneficiaries. (1) Payment to 2 or more persons as joint beneficiaries shall be equal unless the participant, employee or annuitant has designated otherwise in the written designation of beneficiary on file with the department.

(2) A beneficiary of a deceased participant, annuitant, alternate payee, beneficiary, or employee may waive absolutely and without right of reconsideration or recovery all or part of any benefit payable under this chapter. The beneficiary shall then be determined as if the waiving beneficiary had died prior to the decedent except that if the person was a beneficiary under group 2 under s. 40.02 (8) (a) 2., payment shall be made as if at least one child had survived the participant, alternate payee, beneficiary, employee, or annuitant. Unless the department receives the beneficiary's written request to cancel the waiver before the date on which it would otherwise become effective, the waiver shall be effective on the first day of the 2nd month commencing after it is received by the department or the date specified in the waiver, if later. A waiver received after the effective date on which a beneficiary has commenced a monthly annuity under s. 40.73 (2) or (3) shall apply to monthly payments payable after the effective date of the waiver. Payment shall be subject to the restrictions specified in s. 40.73 (2) (b).

(4) If a participant, employee or annuitant fully terminates all coverage and closes all accounts to which a written beneficiary designation applies, the designation does not apply if the individual again becomes a participant, employee or annuitant.

(5) A designation of a testamentary trust as beneficiary shall satisfy the requirement of s. 40.02 (8) (a) 1. that a person or trust be specifically named in a written designation of beneficiary whether the will establishing the trust is written before or after the designation of beneficiary is received by the department. If, however, a designation specified the date or otherwise identified a specific will, the designation shall not apply if the will is not the last will and testament of the participant, employee or annuitant.

History: 1981 c. 96; 1987 a. 309; 2005 a. 151.

SUBCHAPTER VII

DEFERRED COMPENSATION PLANS

40.80 State deferred compensation plan. (1) The deferred compensation board shall select and contract with deferred compensation plan providers to be used by state agencies for providing deferred compensation plans to state employees.

(2) The deferred compensation board shall:

- (a) Determine the requirements for and the qualifications of the deferred compensation plan providers.
- (b) Approve the terms and conditions of the proposed contracts for administrative and investment services.
- (c) Determine the procedure for the selection of the deferred compensation plan providers.
- (d) Approve the terms and conditions of model salary reduction agreements which shall be used by each state agency.

(e) Require as a condition of the contractual agreements entered into under this section that approved deferred compensation plan providers shall provide service to state agencies only as approved by the deferred compensation board.

(f) Require as a condition of the contractual agreements entered into under this section that the deferred compensation plan providers shall reimburse the department, to be credited to the administrative account of the public employee trust fund in s. 40.04 (2), for any costs incurred directly or indirectly by the department in soliciting, evaluating, monitoring and servicing deferred compensation plans.

(g) Serve as trustee of any deferred compensation plan established under this section, hold the assets and income of the plan in trust for the exclusive benefit of the employees who participate in the plan and their beneficiaries, and maintain the plan as an eligible deferred compensation plan, as defined in 26 USC 457 (b), and as a governmental plan for eligible employers, as defined in 26 USC 457 (e) (1) (A).

(2g) The deferred compensation board may accept timely appeals of determinations made by the department affecting any right or benefit under any deferred compensation plan provided for under this section.

(2m) The deferred compensation board shall promulgate rules establishing procedures, requirements and qualifications for offering deferred compensation plans to state employees in addition to the deferred compensation plans offered by deferred compensation providers selected and contracted with under sub. (2).

(2r) (a) In this subsection, “domestic relations order” means a judgment, decree, or order issued by a court pursuant to a domestic relations law of any state or territory of the United States that does all of the following:

1. Relates to a marriage that terminated after December 1, 2001.
2. Assigns all or part of a participant’s accumulated assets held in a deferred compensation plan under this subchapter to a spouse, former spouse, child, or other dependent to satisfy a family support or marital property obligation.
3. Names the deferred compensation plan established under this subchapter and is submitted to the deferred compensation plan provider selected under sub. (1).
4. Satisfies the requirements established by the deferred compensation board under par. (c).

(b) Notwithstanding s. 40.08 (1), a participant’s accumulated assets held in an account in the deferred compensation plan established under this subchapter may be divided pursuant to a domestic relations order.

(c) The deferred compensation board shall prescribe the requirements for a domestic relations order and the administrative procedure for dividing an account in the deferred compensation plan established under this subchapter. The requirements shall be included in any deferred compensation plan and trust document approved by the deferred compensation board.

(d) The deferred compensation board and any member or agent thereof, the department and any employee or agent thereof, and the deferred compensation plan provider selected under sub. (1) are immune from civil liability for all of the following:

1. Any act or omission while performing official duties relating to implementing a domestic relations order under this subsection.
2. Any act or omission of a participant with respect to the participant’s account under a deferred compensation plan, including specifically any deferral or investment election or distribution, during the period that begins on the day on which the participant’s marriage is terminated by a court and ends on the day on which his or her account is divided pursuant to a domestic relations order.

(3) Any action taken under this section shall apply to employees covered by a collective bargaining agreement under subch. V of ch. 111.

History: 1981 c. 187; 1989 a. 13, 31, 336; 1991 a. 152; 1995 a. 27; 2003 a. 160; 2005 a. 150.

Cross Reference: See also s. ETF 70.01, Wis. adm. code.

Sub. (2m) requires the establishment of rules for alternative or supplemental deferred compensation plans, but does not require that any such plans be offered. 79 Atty. Gen. 168.

40.81 Deferred compensation plan authorization.

(1) An employer other than the state or the University of Wisconsin Hospitals and Clinics Authority may provide for its employees the deferred compensation plan established under s. 40.80. Any employer, including this state and the University of Wisconsin Hospitals and Clinics Authority, who makes the plan under s. 40.80 available to any of its employees shall make it available to all of its employees under procedures established by the department under this subchapter.

(2) Any local government employer, or 2 or more employers acting jointly, may also elect under procedures established by the employer or employers to contract directly with a deferred compensation plan provider to administer a deferred compensation plan or to manage any compensation deferred under the plan and may also provide a plan under section 403 (b) of the internal revenue code under procedures established by the local government employer or employers.

(3) Any action taken under this section shall apply to employees covered by a collective bargaining agreement under subch. IV or V of ch. 111.

History: 1981 c. 187, 391; 1983 a. 290; 1991 a. 39; 1995 a. 27.

40.82 General provisions. (1) Any part of gross compensation deferred under a deferred compensation plan established under this subchapter which would have been treated as current earnings or wages if paid immediately to the employee shall be treated as current earnings or wages for purposes of the federal social security act or any retirement, pension, or group insurance benefit plan provided by the department.

(2) Compensation that is withheld under a deferred compensation plan contract between an employer and an employee may be invested by the employer or a person other than the employer who is authorized by contract to administer the funds. The employer may determine the types of investments in which the deferred compensation funds may be invested. The deferred compensation funds may be invested and reinvested in the same manner provided for investments under s. 881.01.

History: 1981 c. 187; 2003 a. 264.

Section 40.08 (1) does not permit the division of a deferred compensation account pursuant to a qualified domestic relations order. *Preiss v. Preiss*, 2000 WI App 185, 238 Wis. 2d 368, 617 N.W.2d 514, 99–3261.

SUBCHAPTER VIII

EMPLOYEE–FUNDED REIMBURSEMENT ACCOUNTS

40.85 Employee–funded reimbursement account plan. (1) The board shall select and contract with employee–funded reimbursement account plan providers to be used by state agencies.

(2) The board shall do all of the following:

- (a) Determine the requirements for and the qualifications of the employee–funded reimbursement account plan providers.
- (b) Approve the terms and conditions of the proposed contracts for administrative and related services.

(c) Determine the procedure for the selection of the employee–funded reimbursement account plan providers in accordance with s. 16.705.

(d) Approve the terms and conditions of model agreements which shall be used by each state employee to establish an employee–funded reimbursement account.

(e) Require as a condition of the contractual agreements entered into under this section that approved employee–funded reimbursement account plan providers may provide service to state agencies only as approved by the board.

(f) Require as a condition of the contracts entered into under sub. (1) that the employee–funded reimbursement account plan providers reimburse the department, to be credited to the administrative account of the public employee trust fund under s. 40.04 (2) (c), for administrative costs incurred by the department in connection with employee–funded reimbursement account plans.

(g) Deposit into the appropriate accounts established under s. 40.04 (9m) (a) that part of an employee’s gross compensation that the employee wants placed in each employee–funded reimbursement account.

History: 1987 a. 399; 1989 a. 14; 2001 a. 16.

40.86 Covered expenses. An employee–funded reimbursement account plan may provide reimbursement to an employee for only the following expenses that are actually incurred and paid by an employee and that the board determines are consistent with the applicable requirements of the internal revenue code:

(1) Dependent care assistance for a person who is dependent on the employee.

(2) The employee’s share of premiums for any group insurance benefit plan provided by the department under this chapter, or any other group insurance benefit plan approved under s. 20.921 (1) (a) 3., except premiums for income continuation benefits under s. 40.62.

(3) Medical expenses which are not covered under a health insurance contract.

(4) Transportation expenses authorized under section 132 of the Internal Revenue Code.

History: 1987 a. 399; 1989 a. 14; 1991 a. 39, 189; 1995 a. 302; 2001 a. 16.

40.87 Treatment of compensation. Any part of gross compensation that an employer places in a reimbursement account under an employee–funded reimbursement account plan established under this subchapter which would have been treated as current earnings or wages if paid immediately to the employee shall be treated as current earnings or wages for purposes of any retirement or group insurance benefit plan provided by the department.

History: 1987 a. 399; 1991 a. 39.

40.875 Administrative and contract costs. (1) The department shall do all of the following:

(a) Beginning on January 1, 1990, collect, from each state agency with employees eligible to participate in an employee–funded reimbursement account plan, a fee in an amount determined by the department to equal that state agency’s share of all of the following:

1. Costs under contracts with employee–funded reimbursement account plan providers.

2. The department’s administrative costs under this subchapter.

(b) Establish a formula, subject to approval by the board, to determine the fees charged to state agencies under par. (a).

(c) Establish procedures for collecting the fees charged under par. (a).

(d) Collect forfeitures from employee–funded reimbursement accounts, under the terms of contracts with employee–funded reimbursement account plan providers or with employees.

(e) Deposit fees collected under par. (a), forfeitures collected under par. (d) and interest earned on the fees and forfeitures in the fund, credited to the account established under s. 40.04 (9m) (a) to pay costs described in par. (a) 1. and 2.

(f) Charge costs described in par. (a) 1. and 2. to the account established under s. 40.04 (9m) (a).

(2) The department may base the fees charged under sub. (1) (a) on estimates of anticipated administrative and contract costs.

History: 1989 a. 14.

SUBCHAPTER IX

HEALTH INSURANCE PREMIUM CREDITS

40.95 Health insurance premium credits. (1) (a) Subject to sub. (2), the department shall administer a program that provides health insurance premium credits for the purchase of health insurance for a retired employee, or the retired employee’s surviving insured dependents; for an eligible employee under s. 40.02 (25) (b) 6e., or the eligible employee’s surviving insured dependents; for an employee who is laid off, but who is not on a temporary, school year, seasonal, or sessional layoff, and his or her surviving insured dependents; and for the surviving insured dependents of an employee who dies while employed by the state, for the benefit of an eligible employee whose compensation includes such health insurance premium credits and who satisfies at least one of the following:

1. The employee accrues accumulated unused sick leave under s. 13.121 (4), 36.30, 230.35 (2), 233.10 or 757.02 (5).

2. The employee has his or her compensation established in a collective bargaining agreement under subch. V of ch. 111.

3. The employee has his or her compensation established in a collective bargaining agreement under subch. I of ch. 111 and the employee is employed by the University of Wisconsin Hospitals and Clinics Authority.

(b) The health insurance premium credits shall be based on the employee’s years of continuous service, accumulated unused sick leave and any other factor specified as part of the employee’s compensation.

(2) The department is not required to administer any program that provides health insurance premium credits for the purchase of health insurance for a retired employee, or the retired employee’s surviving insured dependents; for an eligible employee under s. 40.02 (25) (b) 6e., or the eligible employee’s surviving insured dependents; for an employee who is laid off, but who is not on a temporary, school year, seasonal, or sessional layoff, and his or her surviving insured dependents; and for the surviving insured dependents of an employee who dies while employed by the state, if the department determines that the program does not conform to the program approved by the joint committee on employment relations under s. 230.12 (9).

History: 1995 a. 88, 89, 216; 2003 a. 33, 117, 326.

SUBCHAPTER X

PRIVATE EMPLOYER HEALTH CARE COVERAGE

NOTE: This subchapter is repealed eff. 1–1–10 by 1999 Wis. Act 9.

40.98 Health care coverage. (1) In this subchapter:

(ag) “Abortion” means the use of an instrument, medicine, drug or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant or for whom there is reason to believe that she may be pregnant and with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus.

(ar) “Board” means the private employer health care coverage board.

(b) “Dependent” means a spouse, an unmarried child under the age of 19 years, an unmarried child who is a full–time student under the age of 21 years and who is financially dependent upon the parent, or an unmarried child of any age who is medically certified as disabled and who is dependent upon the parent.

(bm) “Eligible employee” has the meaning given in s. 632.745 (5) (a).

(c) “Employee” means any person who receives earnings as payment for personal services rendered for the benefit of any employer including officers of the employer. An employee is considered to have separated from the service of an employer at the end of the day on which the employee last performed services for the employer, or, if later, the day on which the employee–employer relationship is terminated because of the expiration or termination of leave without pay, sick leave, vacation or other leave of absence. A person shall not be considered an employee if any of the following applies:

1. The person is employed under a contract involving the furnishing of more than personal services.

2. The person is customarily engaged in an independently established trade, business or profession providing the same type of services to more than one employer and the person’s services to an employer are not compensated for on a payroll of that employer.

3. The person is a patient or inmate of a hospital, home or institution and performs services in the hospital, home or institution.

(d) “Employer” means any person doing business or operating an organization in this state and employing at least 2 eligible employees, except that for a person operating a farm business the person must employ at least one eligible employee. “Employer” does not include an employer as defined in s. 40.02 (28).

(e) “Health care coverage program” means the health care coverage program established under sub. (2) (a).

(f) “Insurer” has the meaning given in s. 600.03 (27).

(g) “Nontherapeutic abortion” means an abortion that is not directly and medically necessary to prevent the death of the woman.

(2) (a) 1. The department shall design an actuarially sound health care coverage program for employers that includes more than one group health care coverage plan and that provides coverage beginning not later than January 1, 2001. The health care coverage program shall be known as the “Private Employer Health Care Purchasing Alliance”. In designing the health care coverage program, the department shall consult with the office of the commissioner of insurance and may consult with the departments of commerce and health and family services. The health care coverage program may not be implemented until it is approved by the board.

2. The department shall solicit and accept bids and make every reasonable effort to enter into a contract for the administration of the health care coverage plans under the program, based on criteria established by the board. If the department has not entered into a contract for the administration of the health care coverage plans under the program for coverage to begin before January 1, 2001, the department shall submit a report to the cochairpersons of the joint committee on finance specifying the department’s reasons for not entering into a contract. After submitting the report to the cochairpersons of the joint committee on finance, the department shall provide all administrative services necessary for the provision of the health care coverage plans under the program. During the period that the department is providing the administrative services, the department shall continue to make every reasonable effort to contract for the administration of the health care coverage plans under the program.

3. The department shall enter into contracts with insurers who are to provide health care coverage under the health care coverage program.

4. The department or the administrator selected under subd. 2. shall solicit and accept bids and shall enter into a contract for marketing the health care coverage program.

5. The department or the administrator selected under subd. 2. shall maintain a toll–free telephone number to provide information on the health care coverage program.

(b) Every health care coverage plan under the health care coverage program is subject to the provisions of chs. 600 to 646 that apply to group health benefit plans, as defined in s. 632.745 (9), to the same extent as any other group health benefit plan, as defined in s. 632.745 (9).

(bm) No health care coverage plan under the health care coverage program may provide coverage of a nontherapeutic abortion except by an optional rider or supplemental coverage provision that is offered and provided on an individual basis and for which an additional, separate premium or charge is paid by the individual to be covered under the rider or supplemental coverage provision. Only funds attributable to premiums or charges paid for coverage under the rider or supplemental coverage provision may be used for the payment of any claim, and related administrative expenses, that relates to a nontherapeutic abortion. Such funds may not be used for the payment of any claim or administrative expenses that relate to any other type of coverage provided by the insurer under the health care coverage plan. Nothing in this paragraph requires an insurer or an employer to offer or provide coverage of an abortion under a health care coverage plan under the health care coverage program.

(c) The health care coverage program established under par. (a), or any health care coverage plan included in the program, may not be combined with any health care coverage plan under subch. IV.

(d) All insurance rates for health care coverage under the program shall be made available to employers and employees in a manner determined by the board. Rates that apply to coverage for small employers, as defined in s. 635.02 (7), shall be published at least annually, as required in s. 635.12. The rates may be listed by county or by any other regional factor that the board considers appropriate. Annually, the board shall submit a report to the appropriate standing committees under s. 13.172 (3) specifying the average insurance rate for health care coverage under the program by county or by any other regional factor the board considers appropriate.

(e) All plans under the health care coverage program shall have an enrollment period that is established by the board.

(f) 1. If the department has selected an administrator under par. (a) 2., the administrator shall charge employers who participate in the health care coverage program a fee to cover the cost of administrative services for the health care coverage program. The administrator shall reimburse the department for the expenses incurred by the department in designing, marketing and contracting for administrative services for the program. All moneys received by the department under this subdivision shall be credited to the appropriation account under s. 20.515 (2) (g).

2. If the department has not selected an administrator under par. (a) 2., the department shall charge employers who participate in the health care coverage program a fee to cover the costs incurred by the department in designing, marketing and providing administrative services for the health care coverage program. All moneys received by the department under this subdivision shall be credited to the appropriation account under s. 20.515 (2) (g).

(g) The department may not sell any health care coverage under the health care coverage program to an employer or enroll any employee in the health care coverage program, but the department shall make information about the program available to employers on a statewide basis.

(h) The department may seek funding from any person for the payment of costs of designing, marketing, and contracting for or providing administrative services under the health care coverage

program. Any moneys received by the department under this paragraph shall be credited to the appropriation account under s. 20.515 (2) (g).

(3) Any employer who participates in the health care coverage program shall do all of the following:

(a) Offer health care coverage under one or more plans to all of its eligible employees and, if permitted by any plan offered by an insurer under the health care coverage program, may offer health care coverage under such a plan to any of its other employees.

(b) Provide health care coverage under one or more plans to at least 50% of its eligible employees who do not otherwise receive health care coverage as a dependent under any other plan that is not offered by the employer or a percentage of such employees specified by the board, whichever percentage is greater.

(c) Pay for each eligible employee at least 50% of the lowest premium rate for single coverage that is available to the employer for that employee's coverage under the health care coverage program.

(d) Make premium payments for the health care coverage of its employees in the manner specified by the board.

(4) Any employer that provides health care coverage for its employees under the program and that voluntarily terminates coverage under the program is not eligible to participate in the program for at least 3 years from the date that coverage is terminated.

(5) (am) Any insurer that offers a health care coverage plan under the health care coverage program shall provide coverage under the plan to any employer that applies for coverage, and to all of the employer's employees who elect coverage under the health care coverage plan, without regard to the health condition or claims experience of any individual who would be covered under the health care coverage plan if all of the following apply:

1. The employer agrees to pay the premium required for coverage under the health care coverage plan.

2. The employer agrees to comply with all provisions of the health care coverage plan that apply generally to a policyholder or an insured without regard to health condition or claims experience.

(bm) Notwithstanding par. (am), the department, in consultation with the board, may limit the requirement under par. (am) to compliance with s. 635.19.

(6) (a) Health care coverage under the health care coverage program may only be sold by insurance agents licensed under ch. 628.

(b) An insurance agent may not sell any health care coverage under the health care coverage program on behalf of an insurer unless he or she is listed by the insurer under s. 628.11.

(c) The board shall set, and may adjust as often as semiannually, the commission rate for the sale of a policy under the health care coverage program. The rate shall be based on the average commission rate that insurance agents are paid in the state for the sale of comparable health insurance policies at the time that the rate is set or adjusted.

(d) The board may establish training requirements that an insurance agent must satisfy, in addition to any requirements under s. 628.04 (3), to sell health care coverage under the health care coverage program.

(7) (a) Annually, on or before December 31, the board shall submit a report to the appropriate standing committees under s. 13.172 (3) and to the governor on the operation of the health care coverage program. The report shall specify the number of employers and employees participating in the health care coverage program, calculate the costs of the health care coverage program to employers and their employees and include recommendations for improving the health care coverage program.

(b) No later than January 1, 2008, the board shall submit a report to the appropriate standing committees under s. 13.172 (3) and to the governor that offers recommendations as to whether the department should continue to be involved in the design, marketing and contracting for administrative services for the health care coverage program. If the board recommends that the department not be involved in the performance of these functions, the board shall submit proposed legislation eliminating the department's involvement in the performance of these functions to the appropriate standing committees under s. 13.172 (3) at the time that the board submits its report.

NOTE: This section is repealed eff. 1–1–10 by 1999 Wis. Act 9.

History: 1999 a. 9; 2001 a. 16, 109; 2003 a. 33.