



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #259

### Requirements for Rehired Annuitants (Employee Trust Funds)

[LFB 2013-15 Budget Summary: Page 148, #11]

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#### CURRENT LAW

Under current law, when a Wisconsin Retirement System (WRS) participant terminates employment and receives an annuity he or she may return to covered employment (subject to the 30-day break-in-service requirement). The rehired individual may either: (a) terminate the annuity and again become a WRS participating employee; or (b) continue to receive the annuity in addition to the earned wages from covered employment. If the annuity is not terminated, the employee may not be a participant in the WRS and, in the case of state employment, is not eligible for group insurance benefits provided to participating employees. Further, the employee may not use any of his or her employment service as a rehired annuitant for any WRS purposes. If the rehired employee does terminate his or her annuity, he or she returns to participating-employee status and is eligible for all group insurance benefits provided other participating employees and accumulates additional creditable service under the WRS. Such additional creditable service is applicable to a recalculated retirement annuity when the individual again leaves WRS employment.

#### GOVERNOR

Modify the required break-in-service provision for rehiring WRS annuitants from 30 to 75 days. Provide that, if a participant receiving a retirement annuity, or a disability annuitant who has attained his or her normal retirement date, is employed in a position in WRS covered employment in which he or she is expected to work at least two-thirds of what is considered full-time employment by the Department of Employee Trust Funds (ETF), the participant's annuity must be terminated and no annuity payment may be payable until after the participant terminates covered employment.

The provisions would first apply to participating WRS employees who terminate covered employment on the effective date of the bill.

## **DISCUSSION POINTS**

1. Some have raised concerns about WRS annuitants returning to employment with a WRS employer and simultaneously receiving an annuity and earnings from post-retirement work. The Legislative Audit Bureau (LAB) was requested to do a study of the issue by the Joint Legislative Audit Committee. The resulting report was entitled *Wisconsin Retirement System (WRS) Annuitants Hired by Employers Participating in the WRS* (Report 12-17, December, 2012).

2. For the state, the LAB reports that, from January, 2007, through March, 2012, the University of Wisconsin System (UW System) and other state agencies hired 2,783 WRS annuitants who had terminated employment from 2007 through 2011. This included 1,881 annuitants hired by the UW System and 902 hired by other state agencies.

3. As noted above, under current law, a rehired annuitant may either: (a) terminate the annuity and again become a WRS participating employee; or (b) continue to receive the annuity in addition to the earned wages from covered employment. The LAB report indicates that only eight annuitants hired by UW System and 18 hired by other state agencies chose to suspend their annuities and become a participating employee in the WRS.

4. The study also found that of the 2,783 state annuitants, 33.2 percent worked for less than six months after being hired, 27.9 percent worked from six to 12 months, and 1.5 percent worked for more than four years after being hired.

5. The findings indicate that 78.8% of state annuitants who worked continuously during their first six months of employment worked fewer hours per week, on average, than they had worked before retirement, while 5.2% worked more hours per week. Annuitants worked an average of 22 hours per week during the first six months after being hired. With respect to wages, 91.7% of annuitants who worked continuously during their first six months of employment and for whom information was available had hourly wages that were the same as or lower than their hourly wages at retirement and 8.3% had higher wages.

6. The LAB survey of local WRS employers (1,169 respondents, including both school districts and local governments) indicated that 2,599 WRS annuitants were hired from January, 2011, through March, 2012. Almost three-fourths of school districts and one-fourth of local governments that responded to the LAB survey indicated they had hired annuitants. Almost 80% indicated that annuitants were hired for their skills and experience. School districts reported that the expected duration of employment for 39.3% of the 1,681 annuitants they hired was 12 months or less. School districts also reported that 40.7% of annuitants were expected to work less than 20 hours per week and that 80.6% were paid hourly wages lower than their hourly wages before retirement.

7. Arguably, the option to hire annuitants is a valued one from the point of view of

WRS employers. Annuitants presumably have the skills and experience to do the required work well. Often, the positions hired are limited-term and part-time, with compensation at or below the annuitant's pre-retirement wage. This allows employers an effective option to fill relatively short-term needs and provides annuitants with valued additional income. However, perception of the rehired annuitant situation changes when rehired annuitants work for long periods of time at relatively high wage rates. The appearance can be one of taking advantage of a system that allows certain individuals to receive two streams of income from public employment simultaneously.

8. Under current law, individuals can receive an annuity only if they are separated for at least 30 days from all employment that is eligible to receive WRS benefits. An annuitant may, however, work within the initial 30-day period in a position that is ineligible for WRS benefits, if the position is at a different WRS-participating employer than the employer from which he or she terminated employment. The LAB report indicates that because questions were raised about whether some individuals return to work before they are statutorily permitted to do so, the auditors determined the separation periods for all 2,783 state agency and UW System annuitants identified in the study. The results of the analysis are as follows:

<u>Separation Days</u>	<u>Rehired Annuitants</u>	<u>Percentage of Total</u>
30 or Less*	14	0.5%
31 through 60	577	20.7
61 through 90	468	16.9
91 through 120	376	13.5
121 through 150	287	10.3
More than 150	<u>1,061</u>	<u>38.1</u>
Total	2,783	100.0%

\*The 14 individuals with separation periods of 30 days or less were employed in LTE positions, but the LAB did not have the necessary data to determine whether these positions were WRS-eligible.

9. This data does not clearly support the concern that some individuals return to work before they are statutorily permitted to do so. The 14 individuals rehired after less than the required 30 days may or may not meet the statutory standard. However, the vast majority of rehired annuitants do meet the standard, with nearly 79% having separation periods of 60 or more days. The LAB concludes that if the Legislature is concerned about this issue, "... it could lengthen the separation period from at least 30 days to 60, 90, or 120 days or more." The provision under the bill to increase the separation period to 75 days is consistent with this approach.

10. The LAB report also notes the difficulties faced by ETF in identifying and investigating termination situations that may be in violation of the required separation period. The Audit Bureau also makes a number of suggestions to improve ETF oversight in this area. According to ETF officials, the 75-day separation period may help in the administration of these requirements and the Department is supportive of this change.

11. The bill would also provide that, if a participant receiving a retirement annuity, or a disability annuitant who has attained his or her normal retirement date, is employed in a position in WRS covered employment in which he or she is expected to work at least two-thirds of what is considered full-time employment by ETF, the participant's annuity must be terminated and no annuity payment may be payable until after the participant terminates covered employment. As noted above, the appearance of rehired annuitants receiving two streams of income from public employment simultaneously can be viewed negatively. The bill's provision to terminate annuities if the reemployment is at least two-thirds full time is aimed at addressing this situation.

12. The LAB did identify a small number of annuitants who worked for several years after retirement, worked more hours per week than they had worked before retirement, or were paid a higher hourly wage than they had been paid at retirement. These situations raise questions about the intent of these annuitants to truly terminate employment and retire. To address these situations, the Committee may want to approve the Governor's recommendations [Alternative 1], or modify these provisions as discussed below.

### **Department of Employee Trust Funds Proposal**

13. The Department, in response to the AB 40 rehired annuitants provisions, recently conducted an assessment of how a retirement account is reestablished in cases where a rehired annuitant terminates the annuity and again becomes an active participant in the WRS. [The bill would require this to occur if the rehired annuitant is working at least two-thirds of a full-time position.] The current method to accommodate this situation, based on statutory requirements, is technically complex and attempts to give the participant credit for the new service by treating his or her account as if the participant had never previously retired.

14. The Department indicates the calculation of reestablished accounts currently requires manual work by experienced staff that includes many steps that can take multiple days to complete, as well as calculations from the plan's consulting actuary. The current method is problematic because the account that was calculated upon the original retirement is artificially converted into an estimated value intended to represent the individual's account as if he or she had not retired. This account is then used to calculate the annuity at re-retirement. In addition to being difficult to administrate, this process may occasionally produce inequitable results from an actuarial point of view.

15. Based on this analysis of the current method, ETF developed an alternative process that would be easier to administer and is actuarially sound. [ETF officials indicate the WRS actuary has reviewed, and supports, the proposal.] Under the proposed method, if an annuitant is rehired and elects, or is required, to discontinue his or her annuity and again become a WRS participant, the annuity payments to the individual would be suspended. The payments would instead be credited to the participant's employee accumulation account (a WRS account established for all active employees), along with employee and employer WRS contributions relating to creditable service in the rehired position. Upon re-retirement, an annuity payment would be provided that would include: (a) the original annuity amount (which would then be unsuspended); (b) an annuity amount based on the balance in the employee accumulation account from the suspended annuity payments; and (c) an annuity based on the WRS contributions, interest, service, and earnings relating to the

rehired position. These procedures would apply to both required annuity terminations, as provided under the bill, and to voluntary annuity terminations as permitted rehired annuitants under current law.

16. As part of this proposal, the Department would also request that the Secretary of ETF be authorized to promulgate emergency rules relating to these provisions as provided under current law and that the Secretary would not be required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare, and would not be required to provide a finding of emergency for these promulgated rules.

17. The Committee could adopt the ETF proposal as a modification to the bill's provisions. The Governor's recommendations relating to a required break-in-service of 75 days and to require that the participant's annuity must be terminated, if he or she is expected to work at least two-thirds of what is considered full-time employment, would be unaffected. [Alternative 2]

### **Assembly Bill 170**

18. Others have taken the position that the rehired annuitants issue should be addressed more extensively than is the case with the Governor's recommendation. This position is reflected in 2013 Assembly Bill 170. This bill includes the Governor's provision that the participant must remain separated from covered employment under the WRS for at least 75 days in order to be an eligible rehired annuitant. However, AB 170 would provide that a participant's annuity must be terminated until re-retirement, if the person is appointed to a position in covered employment in which he or she is expected to work at least one-half time (rather than two-thirds time, as recommended by the Governor). In addition, the one-half time termination requirement would also apply to annuitants who enter into a contract to provide employee services, and to annuitants employed by a temporary help agency that enters into a contract to provide services to a WRS employer.

19. The treatment of rehired annuitants following termination of the annuity would also be significantly different than the Governor's provision and current law. Under AB 170, even though the participant again becomes a WRS participating employee after terminating his or her annuity, and becomes eligible to receive group insurance benefits provided to other participating employees, the participant would not be allowed to accumulate additional years of creditable service under the WRS for the additional period of covered employment. Also, all WRS employee-required contributions that are paid by the participant during the period in which the annuity was terminated, as well as any interest on those contributions, would be paid to the participant as a lump-sum amount upon the reestablishment of the terminated annuity.

20. The bill would also authorize the Secretary of ETF to promulgate emergency rules relating to these provisions, but the Secretary would not be required to provide evidence that promulgating an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare, and would not be required to provide a finding of emergency for the promulgated rule. The provisions would first apply to a WRS participating employee who terminates covered employment under the WRS on the bill's effective date.

21. Finally, AB 170 would modify the application of a 2011 Wisconsin Act 32 provision that increased the number of hours that an employee must work in order to become a participating employee in the WRS, from one-third to two-thirds of what is considered full-time employment. This modification is already included in AB 40 [see LFB 2013-15 Budget Summary, page 149, #12].

22. If the Committee concludes that the approach specified in AB 170 is preferable, the provisions of that bill could be adopted instead of the Governor's provisions. [This action, however, would not include the AB 170 modification of the application of the 2011 Wisconsin Act 32 provision that increased the number of hours that an employee must work in order to become a participating employee in the WRS (which is a provision in AB 40).] [Alternative 3] Under this alternative, the ETF proposal for handling the reestablishment of retirement accounts for rehired annuitants would not be applicable because AB 170 would not allow WRS participation if an annuity is terminated, and would only permit lump-sum payments of WRS employee-required contributions that are paid by the participant during the period in which the annuity was terminated.

23. Under current law, a bill or amendment that creates or modifies the retirement of, or payment of pensions to, public officers or employees may not be acted on by the Legislature until it has been referred to the Joint Survey Committee on Retirement Systems and the Joint Survey Committee has submitted a written report on the bill or amendment. The report must pertain to the probable costs involved, the effect on the actuarial soundness of the retirement system, and the desirability of the proposal as a matter of public policy. If needed, an actuarial study of the proposal may be obtained. On February 20, 2013, the biennial budget bill (AB 40) was referred to the Joint Survey Committee on Retirement Systems to review two AB 40 provisions: (a) the rehired annuitant provisions discussed in this paper; and (b) provisions relating to WRS eligibility for employees hired on or before July 1, 2011 [LFB 2013-15 Budget Summary: Page 149, #12]. If either the ETF proposal (Alternative 2) or the annuitant provisions of AB 170 (Alternative 3) is adopted by the Joint Committee on Finance, the provision will be included in the review of AB 40 by the Joint Survey Committee on Retirement Systems.

24. In its report, LAB also notes that there are reasons the Legislature could choose to make no modifications to statutes that govern how annuitants are able to return to work for WRS-participating employers. First, the annuitants examined who returned to work for state agencies in recent years generally worked part-time and for less than one year. This indicates that most rehired annuitants did not intend to work extensively while receiving their annuities. Further, most annuitants were paid either the same hourly wage or a lower hourly wage than they had been paid at retirement. In addition, employers indicate that annuitants possess skills and experience that are valued, provide an important option to meet needs until permanent replacements are hired, and often help to train new staff. School districts also highly value rehired annuitants to serve as substitute teachers.

25. It can be argued that these benefits outweigh the relatively small number of questionable situations that may occur under current law provisions. Therefore, the Governor's provision could be deleted. [Alternative 4]

26. Finally, the Committee could delete the Governor's provisions, but adopt the ETF

proposal on the administration of rehired annuitants who choose to end their annuities during the period of re-employment. [Alternative 5]

## **ALTERNATIVES**

1. Approve the Governor's recommendation to modify the required break-in-service provision for rehiring WRS annuitants from 30 to 75 days. Provide that, if a participant receiving a retirement annuity, or a disability annuitant who has attained his or her normal retirement date, is employed in a position in WRS covered employment in which he or she is expected to work at least two-thirds of what is considered full-time employment by the Department of Employee Trust Funds (ETF), the participant's annuity must be terminated and no annuity payment may be payable until after the participant terminates covered employment. The provisions would first apply to participating WRS employees who terminate covered employment on the effective date of the bill.

2. Modify the Governor's recommendation by providing that, if a participant receiving a retirement annuity, or a disability annuitant who has attained his or her normal retirement date, is employed in a position in WRS covered employment in which he or she is expected to work at least two-thirds of what is considered full-time employment by the Department of Employee Trust Funds, the annuity would be suspended, including any amount provided by additional contributions, and no annuity payment would 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.

Provide that, upon suspension of an annuity, the retirement account of the participant whose annuity is suspended would be established on the following basis: (a) the amount of the annuity payments that would have been paid under the suspended annuity, from the original annuity suspension date to the subsequent retirement date, would be credited to a memorandum account; and (b) upon becoming a participating employee, a subsequent retirement account would be established and would include the memorandum account amounts specified above (the suspended annuity payments), interest, and any contributions made, and creditable service earned, during the subsequent participating employment.

Provide that, upon the subsequent retirement and application for an annuity, the suspended annuity would be reinstated and the subsequent annuity of a former annuitant would be computed as an original annuity, based upon the participant's attained age on the effective date of the subsequent annuity, in an optional form as elected by the participant. The subsequent annuity would be initiated at the same time the suspended annuity is reinstated.

Repeal current law provisions relating to the termination of annuity payments, reestablishment of retirement accounts, and recomputed annuities for rehired annuitants that are inconsistent with these alternative provisions. Authorize the Secretary of ETF to promulgate emergency rules relating to these provisions as provided under current law. Provide that the Secretary would not be required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare, and would not be required to provide a finding of emergency for these promulgated rules. Provide that these

provisions would first apply to annuitants who return to employment as participating employees in the Wisconsin Retirement System on the effective date of the bill.

3. Consistent with the provisions of 2013 Assembly Bill 170, modify the required break-in-service provision for rehiring WRS annuitants from 30 to 75 days. Provide that, if a participant receiving a retirement annuity, or a disability annuitant who has attained his or her normal retirement date, is employed in a position in covered employment in which he or she is expected to work at least one-half of what is considered full-time employment by ETF, as determined by rule, the participant's annuity is required to be terminated and no annuity payment may be payable until after the participant terminates covered employment.

Provide that, if a participant receiving a retirement annuity, or a disability annuitant who has attained his or her normal retirement date, enters into a contract to provide employee services with a participating employer and he or she is expected to work at least one-half of what is considered full-time employment by ETF, as determined by rule, the participant's annuity is required to be terminated and no annuity payment shall be payable until after the participant no longer provides employee services under the contract.

Provide that, if a participant receiving a retirement annuity, or a disability annuitant who has attained his or her normal retirement date, is employed by a temporary help agency, as defined in statute, which enters into a contract with a participating WRS employer to provide services, and the participant is expected to provide services for the participating employer in a capacity of at least one-half of what is considered full-time employment by ETF, as determined by rule, the participant's annuity is required to be terminated and no annuity payment may be payable until after the participant no longer provides employee services for the participating employer.

Provide that a participant who terminates an annuity may not receive any creditable service during the period in which the annuity was terminated, nor may any earnings received during the period in which the annuity was terminated be used for purposes of recalculating the participant's final average earnings. Provide that all employee-required WRS contributions that are paid by a participant who terminates an annuity, during the period in which the annuity was terminated, as well as any interest on those contributions, must be paid to the participant as a lump sum upon the reestablishment of the terminated annuity.

Authorize the Secretary of ETF to promulgate emergency rules relating to these provisions, but provide that the Secretary would not be required to provide evidence that promulgating an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare, and would not be required to provide a finding of emergency for the promulgated rule. The provisions would first apply to a WRS participating employee who terminates covered employment under the WRS on the bill's effective date.

4. Delete provision.

5. Delete provision. Provide that, if a participant receiving a retirement annuity, or a disability annuitant who has attained his or her normal retirement date, is employed in a position in WRS covered employment and chooses to again become a WRS participating employee, the

annuity would be suspended, including any amount provided by additional contributions, and no annuity payment would 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.

Provide that, upon suspension of an annuity, the retirement account of the participant whose annuity is suspended would be established on the following basis: (a) the amount of the annuity payments that would have been paid under the suspended annuity, from the original annuity suspension date to the subsequent retirement date, would be credited to a memorandum account; and (b) upon becoming a participating employee, a subsequent retirement account would be established and would include the memorandum account amounts specified above (the suspended annuity payments), interest, and any contributions made, and creditable service earned, during the subsequent participating employment.

Provide that, upon the subsequent retirement and application for an annuity, the suspended annuity would be reinstated and the subsequent annuity of a former annuitant would be computed as an original annuity, based upon the participant's attained age on the effective date of the subsequent annuity, in an optional form as elected by the participant. The subsequent annuity would be initiated at the same time the suspended annuity is reinstated.

Repeal current law provisions relating to the termination of annuity payments, reestablishment of retirement accounts, and recomputed annuities for rehired annuitants that are inconsistent with these alternative provisions. Authorize the Secretary of ETF to promulgate emergency rules relating to these provisions as provided under current law. Provide that the Secretary would not be required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare, and would not be required to provide a finding of emergency for these promulgated rules. Provide that these provisions would first apply to annuitants who return to employment as participating employees in the Wisconsin Retirement System on the effective date of the bill.

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