February 17, 2022 - Introduced by Law Revision Committee. Referred to Committee on Rules.

AN ACT to repeal 40.08 (1m) (f) 3.; to renumber 40.86 (1), 40.86 (2), 40.86 (3) and 40.86 (4); to amend 40.02 (48r), 40.05 (4) (ah) 3., 40.05 (4) (ah) 4., 40.08 (1m) (f) 1., 40.08 (1m) (f) 2., 40.08 (8) (a) 2., 40.08 (8) (a) 2m., 40.23 (4) (c), 40.23 (4) (e) 2., 40.24 (7) (a) (intro.), 40.24 (7) (b), 40.285 (2) (b) 1. a. to d., 40.285 (2) (b) 4. (intro.) and 40.63 (10); and to create 40.86 (1) (intro.) of the statutes; relating to: changes required by the federal SECURE Act; named survivors under the Wisconsin Retirement System; domestic relations orders executed by the Department of Employee Trust Funds; the purchase of other governmental service under the Wisconsin Retirement System; disability annuities under the Wisconsin Retirement System; employee-funded reimbursement accounts; references to the administrator of the Division of Personnel Management; and
abandoned accounts (suggested as remedial legislation by the Department of Employee Trust Funds).

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**Analysis by the Legislative Reference Bureau**

This bill makes various changes to certain programs administered by the Department of Employee Trust Funds.

Under federal law, a qualified governmental retirement plan is required to begin minimum distributions to participants in the plan upon the participants reaching a specific age. The federal Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 changed the age of the required minimum distribution (RMD) age. The Wisconsin Retirement System is a qualified governmental retirement plan and is required to comply with this change in federal law. The bill changes the RMD references in Wisconsin law.

The bill clarifies that only an employee who is currently employed with a participating employer under the WRS may purchase other governmental service. As currently written, the statute uses the terms “participant” and “participating employee.” The term “participant” includes a person who previously worked for a participating employer but has not yet taken a WRS benefit.

Under the bill, references to beneficiaries and named survivors in statutes regarding annuity options under the WRS are amended to distinguish between a named survivor who will receive a benefit and a beneficiary.

Under current law, when a disability annuity under the WRS is terminated, the person’s WRS account is reestablished and credited with interest. While a person is receiving an annuity from the WRS, the person cannot also be credited with contributions and service. The bill removes obsolete language from the statute.

Under current law, the Employee Trust Funds Board contracts with employee-funded reimbursement account plan providers to provide accounts to be used by state agencies. Employee-funded reimbursement accounts are governed by provisions of the Internal Revenue Code. The bill aligns the statutory language with the language in the IRC.

The bill amends how DETF must treat a retirement account as abandoned if an estate is never opened. The bill allows DETF to consider a benefit abandoned if an estate is never opened within a specific period, the same as if an estate is closed and not reopened.

The bill eliminates an expired provision regarding the execution of domestic relations orders (DROs) that divide a WRS account. Under current law, a DRO must be provided to DETF within 20 years after the judgment of divorce is entered. Under the original DRO law, DETF could not accept a DRO for a judgment of divorce entered before April 28, 1990. The law was amended by 1997 Wisconsin Act 125 to cover DROs for a judgment of divorce entered between January 1, 1982, and April 27, 1990.

The Wisconsin Supreme Court held in *Johnson v. Masters*, 2013 WI 43, 347 Wis. 2d 238, 830 N.W. 2d 647 (2013), that the 20-year limit for execution of DROs issued under the amended law did not begin until the date DETF was able to divide a WRS
account. The 20–year period did not begin to toll until May 2, 1998. DETF has not been authorized to accept a DRO to divide an account under 1997 Wisconsin Act 125 since May 2, 2018.

2015 Wisconsin Act 55 eliminated the Office of State Employment Relations in the Department of Administration, headed by a director, and replaced it with the Division of Personnel Management in DOA, headed by an administrator. The bill corrects a reference to the director of OSER by substituting the administrator of DPM.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Employee Trust Funds and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes changes to statutes or session laws that the Law Revision Committee determined to be in need of revision.

SECTION 1. 40.02 (48r) of the statutes is amended to read:

40.02 (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 set under section 401 (a) (9) of the Internal Revenue Code or April 1 of the calendar year following the calendar year in which a participating employee retires.

NOTE: Sections 1, 9, and 10 bring state law into compliance with federal law changes to the required minimum distributions beginning age made by the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019. These Sections replace specified ages with a reference to the ages set under the relevant Internal Revenue Code section, so that future federal changes will be automatically reflected in state law.

SECTION 2. 40.05 (4) (ah) 3. of the statutes is amended to read:

40.05 (4) (ah) 3. A craft employee shall pay 100 percent of health insurance premiums, unless otherwise determined by the director administrator of the division of personnel management in the department of administration.

SECTION 3. 40.05 (4) (ah) 4. of the statutes is amended to read:
40.05 (4) (ah) 4. Annually, the director administrator of the division of personnel management in the department of administration shall determine the amount of contributions, if any, that the state must contribute into an employee’s health savings account under s. 40.515 and the amount that employees are required to pay for health insurance premiums for a high-deductible health plan under s. 40.515.

NOTE: Sections 2 and 3 align the statutes with changes made under 2015 Wisconsin Act 55, which eliminated the Office of State Employment Relations and created the Division of Personnel Management.

SECTION 4. 40.08 (1m) (f) 1. of the statutes is amended to read:

40.08 (1m) (f) 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.

NOTE: Sections 4 and 5 delete cross-references to the statute in Section 6.

SECTION 5. 40.08 (1m) (f) 2. of the statutes is amended to read:

40.08 (1m) (f) 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. 40.63 (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.

SECTION 6. 40.08 (1m) (f) 3. of the statutes is repealed.

NOTE: SECTION 6 repeals an obsolete statute relating to the division of Wisconsin
Retirement System benefits 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 of Employee Trust Funds receives a qualified domestic relations
order after May 2, 1998.

SECTION 7. 40.08 (8) (a) 2. of the statutes is amended to read:

40.08 (8) (a) 2. If an estate that is determined by the department to be a
beneficiary is never opened or 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 opened
or 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.

NOTE: SECTIONS 7 and 8 clarify how the Department of Employee Trust Funds must
treat abandoned benefits from the account of a deceased individual if a probate estate is
never opened for that individual.
**SECTION 8.** 40.08 (8) (a) 2m. of the statutes is amended to read:

40.08 (8) (a) 2m. If the estate was the designated beneficiary under s. 40.02 (8) (a) 1. and the estate is **never opened or 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 **opened** or 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.

**SECTION 9.** 40.23 (4) (c) of the statutes is amended to read:

40.23 (4) (c) If a participant during the calendar year in which before the year he or she attains 69.5 years the age set under section 401 (a) (9) of the Internal Revenue Code, or the alternate payee during the calendar year before the year in which the participant attains 69.5 years the age set under section 401 (a) (9) of the Internal Revenue Code, 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.

SECTION 10. 40.23 (4) (e) 2. of the statutes is amended to read:

40.23 (4) (e) 2. Subject to section 401 (a) (9) of the Internal Revenue Code, if the
spouse or domestic partner 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 set under
section 401 (a) (9) of the Internal Revenue Code.

SECTION 11. 40.24 (7) (a) (intro.) of the statutes is amended to read:

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

SECTION 12. 40.24 (7) (b) of the statutes is amended to read:
40.24 (7) (b) In administering this subsection, the secretary may require the participant to provide the department with a certification of the participant’s marital or domestic partnership status and of the validity of the spouse’s or domestic partner’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 percent of the amount of the annuity paid to the annuitant to be continued to the spouse or domestic partner beneficiary named survivor.

NOTE: Sections 11 and 12 replace the term “beneficiary” with “named survivor” in statutes relating to annuity options for the Wisconsin Retirement System.

SECTION 13. 40.285 (2) (b) 1. a. to d. of the statutes are amended to read:

40.285 (2) (b) 1. a. The participant participating employee has at least 3 continuous years of creditable service at the time of application.

of years of creditable service previously purchased under this paragraph or s. 40.25

   c. At the time of application, the participant furnishes participation employee evidences of such service that is acceptable to the department.

   d. Except as provided in sub. (4) (b), at the time of application, the participant furnishes participation employee 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 participation employees, based on factors recommended by the actuary.

SECTION 14. 40.285 (2) (b) 4. (intro.) of the statutes is amended to read:

   40.285 (2) (b) 4. (intro.) A participant furnishes participation employee 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 for the following:

   NOTE: sections 13 and 14 replace the term “participant” with “participating
   employee” in statutes relating to purchasing creditable service for purposes of the
   Wisconsin Retirement System.

SECTION 15. 40.63 (10) of the statutes is amended to read:

   40.63 (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
   provided 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.

NOTE: SECTION 15 clarifies that, under the Wisconsin Retirement System, an
annuitant may not earn contributions and creditable service during a period in which the
annuitant receives an annuity from the Wisconsin Retirement System based on the
annuitant’s own service as a participating employee.

SECTION 16. 40.86 (1) (intro.) of the statutes is created to read:

40.86 (1) (intro.) Expenses authorized under section 125 of the Internal
Revenue Code, which may include any of the following:

SECTION 17. 40.86 (1) of the statutes is renumbered 40.86 (1) (a).
SECTION 18. 40.86 (2) of the statutes is renumbered 40.86 (1) (b).
SECTION 19. 40.86 (3) of the statutes is renumbered 40.86 (1) (c).
SECTION 20. 40.86 (4) of the statutes is renumbered 40.86 (2m).

NOTE: SECTIONS 16 and 20 align statutory language with the Internal Revenue
Code by distinguishing between expenses reimbursable under two different plan types. SECTIONS 16 to 19 address expenses authorized under section 125 plans, and SECTION 20 addresses expenses authorized under section 132 plans.

(END)