



## 2023 ASSEMBLY BILL 28

February 10, 2023 - Introduced by Representatives BORN, ALLEN, C. ANDERSON, ARMSTRONG, BEHNKE, BROOKS, CALLAHAN, DITTRICH, DONOVAN, EDMING, EMERSON, GREEN, GUSTAFSON, JOERS, KITCHENS, KRUG, MACCO, MAGNAFICI, MOSES, MURPHY, MURSAU, NEDWESKI, NOVAK, O'CONNOR, PENTERMAN, PETRYK, PLUMER, RATCLIFF, RODRIGUEZ, ROZAR, SCHRAA, SHANKLAND, SNYDER, SORTWELL, SPIROS, STEFFEN, SUBECK, SUMMERFIELD, TRANEL, TUSLER, VANDERMEER, WITTKER, ZIMMERMAN and JACOBSON, cosponsored by Senators MARKLEIN, BALLWEG, FEYEN, JACQUE, JAGLER, JAMES, L. JOHNSON, SMITH and SPREITZER. Referred to Committee on State Affairs.

1     **AN ACT** *to renumber and amend* 40.05 (2) (ar); *to amend* 40.02 (27), 40.02 (48)  
2           (b) 3., 40.02 (48) (c), 40.05 (1) (b) 1., 40.23 (3) (a), 40.28 (1) (a) 2. and 40.73 (1)  
3           (am) 3.; and *to create* 40.02 (17) (n), 40.02 (48) (am) 23., 40.02 (48) (b) 5., 40.05  
4           (1) (a) 7., 40.05 (1) (b) 1a., 40.05 (2) (ap), 40.05 (2) (ar) 2., 40.23 (3) (c), 40.65 (4w),  
5           59.52 (8m) and 111.70 (4) (bn) of the statutes; **relating to:** classifying county  
6           jailers as protective occupation participants under the Wisconsin Retirement  
7           System and the treatment of county jailers under the Municipal Employment  
8           Relations Act.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, participants under the Wisconsin Retirement System (WRS) whose principal duties involve active law enforcement or fire suppression or prevention and require frequent exposure to a high degree of danger or peril and a high degree of physical conditioning are classified as protective occupation participants. Current law classifies police officers, fire fighters, and various other individuals as protective occupation participants. Under the WRS, the normal retirement age of a protective occupation participant is lower than that of other participants and the percentage multiplier used to calculate retirement annuities is higher for protective occupation participants.

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This bill classifies county jailers as protective occupation participants without a requirement that their principal duties involve active law enforcement or active fire suppression or prevention. The bill defines county jailers as persons employed by a county whose principal duties involve supervising, controlling, or maintaining a jail or persons confined in a jail, regardless of whether the jailers have been sworn regarding their duties or whether they serve on a full-time basis.

Under the bill, county jailers who become protective occupation participants on or after the bill's effective date and are employed by a county that did not classify county jailers as protective occupation participants on July 1, 2022, are required to pay all additional employer costs resulting from their classification as protective occupation participants, including the cost of the duty disability program. County jailers who were classified as protective occupation participants before the bill's effective date and county jailers hired on or after the bill's effective date in counties that did classify county jailers as protective occupation participants on July 1, 2022, are not required to pay the additional employer costs. The bill also allows a county jailer to elect at the time of hire not to become a protective occupation participant.

Finally, under the Municipal Employment Relations Act, public safety employees may collectively bargain over wages, hours, and conditions of employment, and general employees may bargain collectively over only an annual percentage wage increase that does not exceed the annual percentage increase in the consumer price index. Under MERA, public safety employees and general employees may not be in the same collective bargaining unit. The bill amends MERA so that a county that treats a county jailer as a public safety employee on the effective date of this bill shall continue to treat any person it employs as a county jailer as a public safety employee except that, if the county subsequently raises a question regarding the appropriateness of including county jailers in a collective bargaining unit containing public safety employees, no person the county employs as a county jailer may be treated as a public safety employee.

Because this bill relates to public employee retirement or pensions, it may be referred to the Joint Survey Committee on Retirement Systems for a report to be printed as an appendix to the bill.

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

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

1           **SECTION 1.** 40.02 (17) (n) of the statutes is created to read:  
2           40.02 (17) (n) Notwithstanding par. (d), each participant who is a county jailer  
3           and who is classified as a protective occupation participant shall be granted  
4           creditable service as a protective occupation participant for all covered service as a

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1 county jailer that was earned on or after the effective date of this paragraph .... [LRB  
2 inserts date], but may not be granted creditable service as a protective occupation  
3 participant for any covered service as a county jailer that was earned before the  
4 effective date of this paragraph .... [LRB inserts date], unless that service was earned  
5 while the participant was classified under sub. (48) (a) and s. 40.06 (1) (d) as a  
6 protective occupation participant.

7 **SECTION 2.** 40.02 (27) of the statutes is amended to read:

8 40.02 (27) “Employee required contribution” means the contribution made by  
9 an employee under s. 40.05 (1) (a) 1. to 4. and 7.

10 **SECTION 3.** 40.02 (48) (am) 23. of the statutes is created to read:

11 40.02 (48) (am) 23. A county jailer.

12 **SECTION 4.** 40.02 (48) (b) 3. of the statutes is amended to read:

13 40.02 (48) (b) 3. A “deputy sheriff” or a “county traffic police officer” is any  
14 officer or employee of a sheriff’s office or county traffic department, except one whose  
15 principal duties are those of a telephone operator, clerk, stenographer, machinist or  
16 mechanic and whose functions do not clearly fall within the scope of active law  
17 enforcement even though such an employee is subject to occasional call, or is  
18 occasionally called upon, to perform duties within the scope of active law  
19 enforcement. Deputy sheriff or county traffic police officer ~~includes~~ does not include  
20 a county jailer, but does include any person regularly employed and qualifying as a  
21 deputy sheriff or county traffic police officer, even if temporarily assigned to other  
22 duties.

23 **SECTION 5.** 40.02 (48) (b) 5. of the statutes is created to read:

24 40.02 (48) (b) 5. A “county jailer” is an employee of a county whose principal  
25 duties involve supervising, controlling, or maintaining a jail or the persons confined

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1 in a jail, as assigned by the sheriff under s. 59.27 (1), regardless of whether the  
2 employee has been sworn regarding his or her duties or whether the employee serves  
3 on a full-time basis. Notwithstanding par. (a), an employer may classify an employee  
4 who is a county jailer as a protective occupation participant under par. (am) 23.  
5 without making a determination that the principal duties of the employee involve  
6 active law enforcement or active fire suppression or prevention. A determination  
7 under this subdivision may not be appealed under s. 40.06 (1) (e) or (em). A county  
8 jailer is not a protective occupation participant if he or she so elects with the employer  
9 under s. 59.52 (8m) or 2023 Wisconsin Act .... (this act).

10 **SECTION 6.** 40.02 (48) (c) of the statutes is amended to read:

11 40.02 (48) (c) In s. 40.65, “protective occupation participant” means a  
12 participating employee who is a police officer, fire fighter, an individual determined  
13 by a participating employer under par. (a) or (bm) to be a protective occupation  
14 participant, county undersheriff, deputy sheriff, county jailer, state probation and  
15 parole officer, county traffic police officer, conservation warden, state forest ranger,  
16 field conservation employee of the department of natural resources who is subject to  
17 call for forest fire control or warden duty, member of the state traffic patrol, state  
18 motor vehicle inspector, University of Wisconsin System full-time police officer,  
19 guard or any other employee whose principal duties are supervision and discipline  
20 of inmates at a state penal institution, excise tax investigator employed by the  
21 department of revenue, person employed under s. 60.553 (1), 61.66 (1), or 62.13 (2e)  
22 (a), or special criminal investigation agent employed by the department of justice.

23 **SECTION 7.** 40.05 (1) (a) 7. of the statutes is created to read:

24 40.05 (1) (a) 7. For a county jailer covered under subd. 3., the percentage of  
25 earnings equal to the total actuarially required contribution rate, as approved by the

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1 board under s. 40.03 (1) (e), for a participating employee whose formula rate is  
2 determined under s. 40.23 (2m) (e) 3., less the contribution rate paid by the employer  
3 for a county jailer under sub. (2) (a). Contributions under this section for an employee  
4 who first becomes a participating employee as a county jailer and is certified as a  
5 protective occupation participant on or after the effective date of this subdivision ....  
6 [LRB inserts date], and is employed by a county that did not classify county jailers  
7 as protective occupation participants on July 1, 2022, shall be made by a reduction  
8 in salary and, for tax purposes, shall be treated as employer contributions under  
9 section 414 (h) (2) of the Internal Revenue Code. A participating employee may not  
10 elect to have contributions required by sub. (2) (a) paid directly to the employee or  
11 make a cash or deferred election with respect to the contributions. Employees who  
12 are participating employees on the effective date of this subdivision .... [LRB inserts  
13 date], and who are first certified as protective occupation participants in a county  
14 jailer position on or after the effective date of this subdivision .... [LRB inserts date],  
15 and are employed in a county that did not classify county jailers as protective  
16 occupation participants on July 1, 2022, shall make the contribution under this  
17 section on an after-tax basis.

18 **SECTION 8.** 40.05 (1) (b) 1. of the statutes is amended to read:

19 40.05 (1) (b) 1. Except as otherwise provided in a collective bargaining  
20 agreement entered into under subch. IV or V of ch. 111 and except as provided in  
21 subd. 2., an employer may not pay, on behalf of a participating employee, any of the  
22 contributions required by par. (a). The Except as provided in subd. 1a., the  
23 contributions required by par. (a) shall be made by a reduction in salary and, for tax  
24 purposes, shall be considered employer contributions under section 414 (h) (2) of the  
25 Internal Revenue Code. A participating employee may not elect to have

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1 contributions required by par. (a) paid directly to the employee or make a cash or  
2 deferred election with respect to the contributions.

3 **SECTION 9.** 40.05 (1) (b) 1a. of the statutes is created to read:

4 40.05 (1) (b) 1a. Contributions under par. (a) 7. that are made by county jailers  
5 who are first certified as protective occupation participants on or after the effective  
6 date of this subdivision .... [LRB inserts date], and who are employed in a county that  
7 did not classify county jailers as protective occupation participants on July 1, 2022,  
8 shall be treated as employee contributions.

9 **SECTION 10.** 40.05 (2) (ap) of the statutes is created to read:

10 40.05 (2) (ap) The contributions under par. (a) that are required to be paid by  
11 a participating employer for a county jailer whose formula rate is determined under  
12 s. 40.23 (2m) (e) 3. shall be a percentage of earnings equal to one-half of the total  
13 actuarially required contribution rate, as approved by the board under s. 40.03 (1)  
14 (e), for an employee whose formula rate is determined under s. 40.23 (2m) (e) 1. This  
15 paragraph applies only to contributions paid for a county jailer who becomes a  
16 protective occupation participant on or after the effective date of this paragraph ....  
17 [LRB inserts date], and is employed in a county that did not classify county jailers  
18 as protective occupation participants on July 1, 2022.

19 **SECTION 11.** 40.05 (2) (ar) of the statutes is renumbered 40.05 (2) (ar) 1. and  
20 amended to read:

21 40.05 (2) (ar) 1. Participating Except as provided in subd. 2., participating  
22 employers of employees subject to s. 40.65 shall contribute an additional percentage  
23 or percentages of those employees' earnings based on the experience rates  
24 determined to be appropriate by the board with the advice of the actuary.

25 **SECTION 12.** 40.05 (2) (ar) 2. of the statutes is created to read:

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1           40.05 (2) (ar) 2. County jailers who are first hired as protective occupation  
2 participants on or after the effective date of this subdivision .... [LRB inserts date],  
3 and are employed in a county that did not classify county jailers as protective  
4 occupation participants on July 1, 2022, may make the contribution under subd. 1.  
5 on a pre-tax basis, in lieu of their employers making the contribution. County jailers  
6 who are first certified as protective occupation participants on or after the effective  
7 date of this subdivision .... [LRB inserts date], and are employed in a county that did  
8 not classify county jailers as protective occupation participants on July 1, 2022, shall  
9 make the contribution under subd. 1. on a post-tax basis, in lieu of their employers  
10 making the contribution.

11           **SECTION 13.** 40.23 (3) (a) of the statutes is amended to read:

12           40.23 (3) (a) Except as provided in ~~par.~~ pars. (b) and (c), the initial monthly  
13 amount of any retirement annuity in the normal form shall not be less than the  
14 money purchase annuity which can be provided by applying the sum of the  
15 participant's accumulated additional and required contributions, including interest  
16 credited to the accumulations, plus an amount from the employer accumulation  
17 reserve equal to the participant's accumulated required contributions, less any  
18 accumulated contributions to purchase other governmental service under s. 40.25  
19 (7), 2001 stats., or s. 40.285 (2) (b) to fund the annuity in accordance with the  
20 actuarial tables in effect on the annuity effective date.

21           **SECTION 14.** 40.23 (3) (c) of the statutes is created to read:

22           40.23 (3) (c) Under par. (a), for a county jailer described in s. 40.02 (48) (am)  
23 23., the amount to be paid from the employer accumulation reserve is equal to the  
24 employer required contributions, including interest, paid for a county jailer under  
25 s. 40.05 (2) (a). This paragraph applies only to a county jailer who becomes a

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1 protective occupation participant on or after the effective date of this paragraph ...  
2 [LRB inserts date], and is employed in a county that did not classify county jailers  
3 as protective occupation participants on July 1, 2022.

4 **SECTION 15.** 40.28 (1) (a) 2. of the statutes is amended to read:

5 40.28 (1) (a) 2. The amount equal to 200 percent of employee required  
6 contribution accumulations reserved for a variable annuity as of the date the annuity  
7 begins. Except, for a county jailer described in s. 40.02 (48) (am) 23., the amount  
8 equal to the employee required contributions and the employer required  
9 contributions paid for a county jailer under s. 40.05 (2) (a), including interest,  
10 reserved for a variable annuity on the date the annuity begins. The amount  
11 applicable for a county jailer only applies to a county jailer who becomes a protective  
12 occupation participant on or after the effective date of this subdivision ... [LRB  
13 inserts date], and who is employed in a county that did not classify county jailers as  
14 protective occupation participants on July 1, 2022; and

15 **SECTION 16.** 40.65 (4w) of the statutes is created to read:

16 40.65 (4w) A county jailer who becomes a protective occupation participant on  
17 or after the effective date of this subsection ... [LRB inserts date], is not entitled to  
18 a duty disability benefit under this section for an injury or disease occurring before  
19 the effective date of this subsection ... [LRB inserts date].

20 **SECTION 17.** 40.73 (1) (am) 3. of the statutes is amended to read:

21 40.73 (1) (am) 3. Twice the employee required contributions, after first  
22 subtracting the accumulations under subd. 2., including interest on the  
23 accumulations. Except, for a county jailer described in s. 40.02 (48) (am) 23., the  
24 amount equal to the employee required contributions and the employer required  
25 contributions paid for a county jailer under s. 40.05 (2) (a), after first subtracting the



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1 accumulations under subd. 2., including interest on the accumulations. The amount  
2 applicable for a county jailer only applies to a county jailer who becomes a protective  
3 occupation participant on or after the effective date of this subdivision ... [LRB  
4 inserts date], and who is employed in a county that did not classify county jailers as  
5 protective occupation participants on July 1, 2022.

6 **SECTION 18.** 59.52 (8m) of the statutes is created to read:

7 59.52 (8m) EMPLOYMENT OF COUNTY JAILERS. The board shall provide to an  
8 individual who is employed as a county jailer an option to elect not to be a protective  
9 occupation participant under s. 40.02 (48) (b) 5. at the time the individual is hired  
10 as a county jailer. An individual shall make an election under this subsection in  
11 writing on a form provided by the board.

12 **SECTION 19.** 111.70 (4) (bn) of the statutes is created to read:

13 111.70 (4) (bn) *Public safety employee determination regarding county jailers.*  
14 1. Except as provided under subd. 2., a county jailer, as defined in s. 40.02 (48) (b)  
15 5., is a general municipal employee.  
16 2. A county that treats a county jailer as a public safety employee on the  
17 effective date of this subdivision ... [LRB inserts date], shall continue to treat any  
18 person it employs as a county jailer as a public safety employee except that, if the  
19 county raises a question concerning the appropriateness of including county jailers  
20 in a collective bargaining unit that includes public safety employees, no person it  
21 employs as a county jailer may be treated as a public safety employee.

22 **SECTION 20. Nonstatutory provision.**

23 (1) COUNTY JAILER OPT OUT FROM PROTECTIVE OCCUPATION PARTICIPANT STATUS  
24 UNDER WISCONSIN RETIREMENT SYSTEM. No later than 60 days after the effective date  
25 of this subsection, if an individual employed as a county jailer on the effective date

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1 of this subsection does not want to be a protective occupation participant under the  
2 Wisconsin Retirement System, the individual shall notify his or her employer in  
3 writing on a form provided by the employer. An election not to be a protective  
4 occupation participant is irrevocable.

5 **SECTION 21. Effective date.**

6 (1) This act takes effect on the January 1 after publication.

7 (END)