



1999 SENATE BILL 326

January 19, 2000 - Introduced by LAW REVISION COMMITTEE. Referred to Joint survey committee on Retirement Systems.

1 **AN ACT to amend** 40.02 (1), 40.02 (2), 40.02 (15) (c) 4., 40.02 (38), 40.04 (4) (a) 1.,
2 40.04 (4) (a) 2., 40.04 (7) (intro.), 40.04 (7) (a) (intro.), 40.04 (7) (c), 40.05 (1) (a)
3 7., 40.05 (2) (g) 2., 40.08 (7) (a), 40.23 (1) (b), 40.24 (1) (f), 40.24 (3), 40.24 (7) (a)
4 4., 40.25 (1) (a), 40.25 (1) (b), 40.25 (3m), 40.25 (4), 40.25 (6) (a) 1., 40.25 (6) (a)
5 2., 40.25 (7) (a) 2., 40.25 (7) (a) 3., 40.26 (2) (a), 40.26 (2) (b), 40.28 (1) (a) 1., 40.63
6 (9) (b), 40.63 (10) and 40.73 (1) (b); **to repeal and recreate** 40.08 (4); and **to**
7 **create** 40.02 (54v), 40.05 (1) (a) 5m. and 40.80 (2) (g) of the statutes; **relating**
8 **to:** the making of additional retirement contributions by participants in the
9 Wisconsin retirement system; deferred compensation programs established by
10 the deferred compensation board; purchase of forfeited creditable service under
11 the Wisconsin retirement system; reimbursement of moneys paid by the
12 department of employe trust funds as a result of misrepresentation, fraud or

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- 1 error; and creditable military service under the Wisconsin retirement system
2 (suggested as remedial legislation by the department of employe trust funds).
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Analysis by the Legislative Reference Bureau

Current law permits the making of additional contributions by participants in the Wisconsin retirement system (WRS). These contributions are in addition to the employer and employe required contributions to the WRS. Additional contributions may be used to purchase an annuity at the time of retirement. This bill specifies that there are two different kinds of additional contributions that may be made by participating employes to the WRS: after-tax additional contributions made under section 401 (a) of the Internal Revenue Code (IRC); and tax-deferred additional contributions made under section 403 (b) of the IRC.

Under current law, any participant in the WRS, subject to rules promulgated by the secretary of employe trust funds, may elect as a payout option for a deferred compensation plan established by the deferred compensation board or a plan established by his or her employer, if his or her employer is a local government employer, to have the entire balance treated as an additional contribution to the fixed annuity division of the employe trust fund. (To date, the rules have not been promulgated.) This bill provides that this option is available only for a deferred compensation plan established by the deferred compensation board.

The bill also specifies that the deferred compensation board must serve as trustee of any deferred compensation plan it establishes and must hold the assets and income of the plan in trust for the exclusive benefit of the employes who participate in the plan and their beneficiaries.

Under current law, a participating employe in the WRS may purchase creditable service that he or she may have forfeited in the past. In addition, a participating employe may purchase creditable service under the WRS for service as an employe of the federal government or for service as an employe of an employer that was not covered under the WRS during the period in which the service was performed, but that subsequently became an employer under the WRS. In order to purchase such service, the employe must have at least three continuous years of creditable service under the WRS at the time of application and the number of years that an employe may purchase may not exceed the lesser of ten years or the number of years of creditable service that the employe has at the time of application.

This bill provides that the employe must have at least three continuous years of creditable *current* service under the WRS at the time of application. Under current law, creditable *current* service is defined as “the creditable service granted for service performed for a participating employer and for which a participating employe receives earnings after the effective date of participation for that employer”.

In addition, the bill provides that creditable service previously purchased by a participating employe may not be used to determine the maximum amount of service that a participating employe may purchase.

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Under current law, the department of employe trust funds (DETF) may retain out of any person's annuity or benefit an amount that DETF has determined was paid to the person as a result of misrepresentation, fraud or error. This bill authorizes DETF to secure these inadvertently paid moneys by a lien against the person's account in the employe accumulation reserve of the employe trust fund and any annuity, benefit or obligation of the employe trust fund that is payable or will become payable to the person or the person's beneficiaries.

Currently, under certain conditions, a participating employe under the WRS may receive one year of creditable service under the WRS for each year of military service, up to a maximum of four years of military service credit. However, the participant may not receive military service credits for military service that is used for the purpose of establishing entitlement to a retirement benefit that is paid by the federal government, other than for the nonregular military service program.

This bill provides the new statutory cross-reference to the U.S. Code provision referring to the nonregular military service program.

This bill will be referred to the joint survey committee on retirement systems for a detailed analysis, which will be printed as an appendix to this bill.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

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

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of employe trust funds and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

- 1 **SECTION 1.** 40.02 (1) of the statutes is amended to read:
 2 40.02 (1) "Accumulation" means the total employe required contributions ~~or~~,
 3 employer required contributions ~~or~~, additional contributions or tax-deferred
 4 additional contributions as increased or decreased by application of investment
 5 earnings.

NOTE: The definition is amended to specify that it includes both after-tax additional contributions and tax-deferred (pre-tax) additional contributions.

- 6 **SECTION 2.** 40.02 (2) of the statutes is amended to read:

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1 40.02 (2) “Additional contribution” means any after-tax contribution made by
2 or on behalf of a participant to the retirement system other than employe and
3 employer required contributions.

NOTE: The definition of “additional contribution” is amended to make the term refer only to an after-tax contribution. See also the new definition created by SECTION 5.

4 **SECTION 3.** 40.02 (15) (c) 4. of the statutes is amended to read:

5 40.02 (15) (c) 4. This paragraph does not apply to any active service used for
6 the purpose of establishing entitlement to, or the amount of, any benefit, other than
7 a disability benefit, to be paid by any federal retirement program except OASDHI
8 and the retired pay for nonregular military service program under 10 USC ~~1331 to~~
9 ~~1337~~ 12731 to 12738 or, if the participant makes an election under s. 40.30 (2), by any
10 retirement system specified in s. 40.30 (2) other than the Wisconsin retirement
11 system.

NOTE: This change corrects references to the federal tax code’s provisions relating to military service credit.

12 **SECTION 4.** 40.02 (38) of the statutes is amended to read:

13 40.02 (38) “Immediate annuity” means an annuity, not including an annuity
14 from additional contributions or tax-deferred additional contributions, which begins
15 to accrue not later than 30 days after termination of employment.

NOTE: The definition of “immediate annuity” is amended to exclude both categories of additional contributions.

16 **SECTION 5.** 40.02 (54v) of the statutes is created to read:

17 40.02 (54v) “Tax-deferred additional contribution” means any contribution
18 made to the retirement system by a participating employe as a pre-tax deduction
19 from earnings under section 403 (b) of the Internal Revenue Code.

NOTE: The new definition of “tax-deferred additional contribution” distinguishes these pre-tax contributions from additional (after-tax) contributions.

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1 **SECTION 6.** 40.04 (4) (a) 1. of the statutes is amended to read:

2 40.04 (4) (a) 1. Credited with all employe contributions made under s. 40.05 (1),
3 all employer additional contributions made under s. 40.05 (2) (g) 1., all additional
4 contributions under s. 40.05 (2) (g) 2., all tax-deferred additional contributions
5 under s. 40.05 (1) (a) 5m. and all contribution accumulations reestablished under s.
6 40.26 or 40.63 (10).

NOTE: SECTIONS 6 to 10 amend provisions relating to the accounting of contributions to create separate accounting for each category of additional contributions.

7 **SECTION 7.** 40.04 (4) (a) 2. of the statutes, as affected by 1999 Wisconsin Act 11,
8 is amended to read:

9 40.04 (4) (a) 2. Credited as of each December 31 with interest on the prior year's
10 closing balance at the effective rate on all employe required contribution
11 accumulations in the variable annuity division, on all employe required
12 contributions in the fixed annuity division on December 31, 1984, on all employe
13 required contributions in the fixed annuity division of participants who are not
14 participating employes after December 31, 1984, and on all employe and employer
15 additional contribution accumulations and on all tax-deferred additional
16 contribution accumulations and with interest on the prior year's closing balance at
17 the assumed benefit rate on all employe required contribution accumulations in the
18 fixed annuity division for participants who are participating employes after
19 December 31, 1984, but who terminated covered employment before December 30,
20 1999.

21 **SECTION 8.** 40.04 (7) (intro.) of the statutes is amended to read:

22 40.04 (7) (intro.) The reserves established under subs. (4), (5) and (6) shall be
23 divided both individually and for the purposes of sub. (3) between a fixed annuity

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1 division and a variable annuity division. All required ~~and~~, additional and
2 tax-deferred additional contributions shall be credited to the fixed annuity division
3 except:

4 **SECTION 9.** 40.04 (7) (a) (intro.) of the statutes, as affected by 1999 Wisconsin
5 Act 11, is amended to read:

6 40.04 (7) (a) (intro.) As otherwise elected by a participant prior to April 30,
7 1980, or on or after January 1, 2001. Any participant who was a participant prior
8 to April 30, 1980, and whose accounts on January 1, 1982, include credits segregated
9 for a variable annuity shall have his or her required ~~and~~, additional and tax-deferred
10 additional contributions made on or after January 1, 1982, credited to the variable
11 annuity division in a manner consistent with the participant's election prior to April
12 30, 1980, unless prior to January 1, 1982, the participant terminated such election
13 under s. 40.85, 1979 stats. Any participant who elects or has elected to have any of
14 his or her credits segregated for a variable annuity on or after January 1, 2001, shall
15 have 50% of his or her required ~~and~~, additional and tax-deferred additional
16 contributions made on or after the date of election credited to the variable annuity
17 division. The department shall by rule provide that any participant who elects or has
18 elected variable participation prior to April 30, 1980, or on or after January 1, 2001,
19 may elect to cancel that variable participation as to future contributions. The
20 department's rules shall permit a participant who elects or has elected to cancel
21 variable participation as to future contributions, or an annuitant, to elect to transfer
22 previous variable contribution accumulations to the fixed annuity division. A
23 transfer of variable contribution accumulations under this paragraph shall result in
24 the participant receiving the accrued gain or loss from the participant's variable
25 participation. A participant may specify that election to cancel participation in the

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1 variable annuity division is conditional. If the participant so specifies the election
2 is effective on the first date on which it may take effect on which the participant:

3 **SECTION 10.** 40.04 (7) (c) of the statutes is amended to read:

4 40.04 (7) (c) Any participant whose required contributions are segregated in
5 any portion to provide for a variable annuity may direct that any part or all of
6 subsequent additional and tax-deferred additional contributions credited to the
7 participant's account be segregated to provide for a variable annuity and may at any
8 time by filing a form prescribed by the department change the portion being
9 segregated for any future additional and tax-deferred additional contributions.

10 **SECTION 11.** 40.05 (1) (a) 5m. of the statutes is created to read:

11 40.05 (1) (a) 5m. Tax-deferred additional contributions may be made by any
12 participating employe of an employer that had at least one employe who made such
13 contributions to the Wisconsin retirement system or its predecessor systems under
14 s. 42.30 (3), 1979 stats., on or before May 17, 1982. The making of contributions
15 under this subdivision shall be subject to any limitations imposed on contributions
16 by the Internal Revenue Code, applicable regulations adopted under the Internal
17 Revenue Code and rules of the department. The participating employe and the
18 employer are solely responsible for determining the amount of contributions that
19 may be made to the retirement system under this subdivision and monitoring the
20 annual contributions for compliance with any limitations imposed on contributions
21 by the Internal Revenue Code, applicable regulations adopted under the Internal
22 Revenue Code and rules of the department.

NOTE: The amended provision clarifies that only participating employes of eligible employers may make tax-deferred additional contributions, and the responsibility for determining the amount of contributions that can be made is the responsibility of the employes and employers, not the Wisconsin Retirement System.

23 **SECTION 12.** 40.05 (1) (a) 7. of the statutes is amended to read:

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1 40.05 (1) (a) 7. Subject to any applicable limitations under the internal revenue
2 code, a participating employe may elect to use part or all of his or her accumulated
3 ~~after-tax~~ additional contributions, including interest, made under subd. 5, ~~other~~
4 ~~than contributions treated by the department as contributions to a tax sheltered~~
5 ~~annuity under section 403 (b) of the internal revenue code~~, to purchase creditable
6 service under this chapter.

NOTE: The amendment to this provision removes references relating to use of accumulated after-tax additional contributions to purchase creditable service. The amended provision refers to “additional contributions” which are defined as after-tax contributions.

7 **SECTION 13.** 40.05 (2) (g) 2. of the statutes is amended to read:

8 40.05 (2) (g) 2. Under the rules promulgated under s. 40.03 (2) (r), a participant
9 may, as a payout option for the deferred compensation plan established under subch.
10 ~~VII s. 40.80~~, elect to have the entire balance in the participant’s account under subch.
11 ~~VII s. 40.80~~ treated as an additional contribution to the fixed annuity division,
12 subject to any limitations imposed on contributions by the ~~internal revenue code~~
13 Internal Revenue Code, applicable regulations adopted under the ~~internal revenue~~
14 ~~code~~ Internal Revenue Code and rules of the department. Additional contributions
15 under this subdivision shall be available for all benefit purposes and shall be
16 administered and invested on the same basis as employe additional contributions,
17 except that ss. 40.24 (1) (f) and 40.25 (4) do not apply to additional contributions
18 under this subdivision and s. 40.26 does not apply to an annuity received from
19 additional contributions under this subdivision.

NOTE: This amendment clarifies that the provision relates only to the deferred compensation program established under s. 40.80, stats., for state employes, not to other deferred compensation programs that may be established by an employer under s. 40.81, stats.

20 **SECTION 14.** 40.08 (4) of the statutes is repealed and recreated to read:

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1 40.08 (4) REIMBURSEMENTS OF MONEYS PAID AS A RESULT OF MISREPRESENTATION,
2 FRAUD OR ERROR. (a) If the department has paid any money to a person or estate as
3 a result of misrepresentation, fraud or error, the department shall determine the
4 amount of such payment and shall require that the person or estate reimburse the
5 department for this amount, plus interest at the effective rate of the fixed annuity
6 division.

7 (b) If the department determines that any money has been paid to a person or
8 estate as a result of misrepresentation, fraud or error, the department shall notify
9 the person or the personal representative or special administrator of the person's
10 estate by certified mail of this determination. The department shall send the notice
11 to the last-known address of the person or the personal representative or special
12 administrator of the person's estate. The notice shall inform the person of his or her
13 right to a timely appeal. The notice must be sent within 7 years from the date that
14 the department first acquires actual notice of the alleged misrepresentation, fraud
15 or error.

16 (c) The sending of the notice by the department under par. (b) shall constitute
17 a lien against the person's separate account under s. 40.04 (4) (a) and any annuity,
18 benefit or obligation of the employe trust fund that is payable or will become payable
19 to the person or the person's beneficiaries. This lien takes precedence over all other
20 withholdings, liens or encumbrances, whenever perfected, against the person's
21 separate account under s. 40.04 (4) (a) and any annuity, benefit or obligation of the
22 employe trust fund that is payable or will become payable to the person or the
23 person's beneficiaries.

24 (d) Subject to sub. (10), the department may do any of the following to provide
25 for reimbursement of the amount or any portion of the amount due under par. (a):

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1 1. Obtain voluntary repayment from the person or estate within a reasonable
2 period, as determined by the department.

3 2. Foreclose on the lien against the person's separate account under s. 40.04 (4)
4 (a) or any annuity, benefit or obligation of the employe trust fund that is payable or
5 will become payable to the person or the person's beneficiaries. In foreclosing on this
6 lien, the department may retain the amount or portion of the amount out of any
7 annuity, benefit or obligation of the employe trust fund that is payable or will become
8 payable to the person or the person's beneficiaries or may permanently reduce the
9 person's annuity by the actuarial present value of the amount or portion of the
10 amount that is due under par. (a). If the department forecloses on the lien, the
11 department shall notify, by regular mail, the person or personal representative or
12 special administrator of the person's estate of the foreclosure as soon as practical.

13 3. Request that an employer withhold the amount or any portion of the amount
14 from any sum payable by the employer to any person or estate. If an employer
15 receives such a request, the employer shall withhold and remit the amount to the
16 department.

17 4. Bring a civil action against the person or estate for the amount or any portion
18 of the amount that is not otherwise recovered by the department.

19 (e) Any amount that is reimbursed to the department under par. (d) shall be
20 credited to the appropriate benefit plan accounts.

NOTE: This provision repeals and recreates a provision that allows the department of employe trust funds to collect any amount owed for benefits paid through misrepresentation or fraud or error. The current provisions does not provide that the amounts owed become a statutory lien. Therefore, any debts to the trust fund are unsecured and can be discharged in bankruptcy. The amended provision will provide the department with a mechanism to secure obligations to the trust fund with a lien against other benefits also administered by the department, if the department has paid the money to a person or an estate as a result of misrepresentation, fraud or error. A notice of the fact that money has been paid to a person or an estate as a result of misrepresentation, fraud or error, constitutes a lien against the person's account and any

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annuity, benefit or obligation that the trust fund pays or will pay to the person or the person's beneficiary.

1 **SECTION 15.** 40.08 (7) (a) of the statutes is amended to read:

2 40.08 (7) (a) Any overpayment or underpayment of a lump-sum payment
3 under s. 40.25 or a death benefit which is less than 60% of the amount specified in
4 s. 40.25 (1) (a) rounded to the next highest dollar amount, and any annuity payment
5 error which is less than \$2 per month may not be corrected but shall be credited or
6 debited to the employer accumulation reserve or the appropriate insurance account.
7 However, if the amount of unapplied additional contributions or tax-deferred
8 additional contributions would increase an annuity payment by less than \$2 but is
9 more than 60% of the amount specified in s. 40.25 (1) (a) rounded to the next highest
10 dollar amount, the unapplied additional contributions or tax-deferred additional
11 contributions shall be paid to the annuitant as a lump sum.

NOTE: This provision, relating to overpayments and underpayments, is amended to recognize that the provisions apply to both categories of additional contributions.

12 **SECTION 16.** 40.23 (1) (b) of the statutes is amended to read:

13 40.23 (1) (b) Except as provided in par. (bm), all retirement annuities shall be
14 effective on the day following, or on the first day of a month following, the date of
15 separation from the last participating employer by which the participant was
16 employed, as specified by the participant in the written application for the annuity.
17 However, the date shall not be more than 90 days prior to the date of receipt of the
18 application by the department. The participant may specify that additional and
19 tax-deferred additional contribution accumulations shall not be applied to provide
20 an annuity until a subsequent application is filed for an annuity to be paid from the
21 additional and tax-deferred additional contribution accumulations. The
22 subsequent application shall be made as specified under sub. (4) or the department

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1 shall automatically distribute the accumulated additional and tax-deferred
2 additional contribution accumulations as a lump sum.

NOTE: This provision is amended to clarify that the treatment of retirement annuities applies to both categories of additional contributions.

3 **SECTION 17.** 40.24 (1) (f) of the statutes is amended to read:

4 40.24 (1) (f) From accumulated additional contributions made under s. 40.05
5 (1) (a) 5. and tax-deferred additional contribution accumulations made under s.
6 40.05 (1) (a) 5m. only, an annuity certain payable for and terminating after the
7 number of months specified by the applicant, regardless of whether the applicant
8 dies before or after the number of months specified, provided that the monthly
9 amount of the annuity certain is at least equal to the minimum amount established
10 under s. 40.25 (1) (a). Subject to the period of distribution required under s. 40.23
11 (4) (b) 2., the number of months specified shall not exceed 180 and shall not be less
12 than 24. At any time before the expiration of the certain period, the annuitant may
13 elect to receive a lump-sum payment equal to the present value of the remaining
14 monthly payments. If the death of the annuitant occurs prior to the expiration of the
15 certain period, the remaining payments shall be made in accordance with s. 40.73
16 (2) without regard to any other annuity payments payable to the beneficiary. An
17 annuity under this paragraph may be initiated prior to any other annuity amount
18 provided under this subchapter and prior to age 55 if all other qualifications for
19 receiving an annuity payment are met.

20 **SECTION 18.** 40.24 (3) of the statutes is amended to read:

21 40.24 (3) Any participant specified under sub. (1) (intro.) may elect to receive
22 the amount provided by accumulated additional contributions and tax-deferred
23 additional contributions in a different optional form than the balance of the annuity.

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1 **SECTION 19.** 40.24 (7) (a) 4. of the statutes is amended to read:

2 40.24 (7) (a) 4. Benefits paid from accumulated additional contributions and
3 tax-deferred additional contributions.

NOTE: The changes made by SECTIONS 17 to 19 to provisions relating to annuity options, clarify that these provisions apply to both categories of additional contributions.

4 **SECTION 20.** 40.25 (1) (a) of the statutes is amended to read:

5 40.25 (1) (a) If all other requirements for payment of a retirement annuity are
6 met and if the retirement annuity in the normal form which could be provided under
7 s. 40.23 is equal to or less than \$100 monthly for a benefit with an effective date that
8 is on or after April 23, 1994, ~~but before the end of the calendar year of 1993~~ or, for
9 a benefit with an effective date in a subsequent calendar year, the monthly amount
10 applied under this paragraph for the previous calendar year increased by the salary
11 index and ignoring fractions of the dollar, the then present value, including
12 additional contributions and tax-deferred additional contributions, of the annuity
13 shall be paid in a single sum instead of as an annuity. The additional contribution
14 accumulations and tax-deferred additional contribution accumulations shall not be
15 included in determining whether a single sum should be paid if the optional form
16 provided by s. 40.24 (1) (f) or a lump sum under sub. (4) is selected.

17 **SECTION 21.** 40.25 (1) (b) of the statutes is amended to read:

18 40.25 (1) (b) If all other requirements for payment of a retirement annuity are
19 met and if the retirement annuity in the normal form which could be provided under
20 s. 40.23 from all available accumulations and credits, other than accumulations from
21 additional contributions and tax-deferred additional contributions, is more than
22 \$100 and less than \$200 monthly for a benefit with an effective date that is on or after
23 April 23, 1994, ~~but before the end of the calendar year of 1993~~ or, for a benefit with

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1 an effective date in a subsequent calendar year, the monthly amounts applied under
2 this paragraph for the previous calendar year increased by the salary index and
3 ignoring fractions of the dollar, then any participant may elect to receive, in lieu of
4 the annuity, the then present value, including additional contributions and
5 tax-deferred additional contributions, of the annuity in a single sum.

6 **SECTION 22.** 40.25 (3m) of the statutes is amended to read:

7 40.25 (3m) A participant's application for a lump sum payment under sub. (1)
8 (b) or (2), filed after May 7, 1994, shall be signed by both the participant and the
9 participant's spouse, if the participant has been married to that spouse for at least
10 one year immediately preceding the date the application is filed. The department
11 may promulgate rules that allow for the waiver of the requirements of this subsection
12 for a situation in which, by reason of absence or incompetency, the spouse's signature
13 may not be obtained. This subsection does not apply to any benefits paid from
14 accumulated additional contributions and tax-deferred additional contributions.

15 **SECTION 23.** 40.25 (4) of the statutes is amended to read:

16 40.25 (4) If all the requirements for payment of a retirement annuity or a
17 separation benefit are met, except filing of an application, a participant may elect
18 that the accumulation from the participant's additional contributions made under
19 s. 40.05 (1) (a) 5. and tax-deferred additional contributions made under s. 40.05 (1)
20 (a) 5m. be paid as a lump sum in lieu of an annuity from those additional
21 contributions.

NOTE: SECTIONS 20 to 23 amend provisions relating to lump-sum payments to
clarify that the provisions apply to both categories of additional contributions.

22 **SECTION 24.** 40.25 (6) (a) 1. of the statutes is amended to read:

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1 40.25 (6) (a) 1. The participating employe must have at least 3 continuous years
2 of creditable current service under the fund at the time of application for
3 reestablishment of creditable service under this subsection.

NOTE: This provision is amended to clarify that a participating employe must have at least three continuous years of creditable current service at the time of application for purchasing forfeited service.

4 **SECTION 25.** 40.25 (6) (a) 2. of the statutes is amended to read:

5 40.25 (6) (a) 2. Applications for reestablishment of creditable service must
6 include all creditable service that has been forfeited except that the number of years
7 which may be reestablished under this subsection may not be greater than the
8 creditable service of the participating employe at the date of application, or 10 years,
9 whichever is smaller. Creditable service previously purchased under this chapter
10 may not be used to determine the maximum amount of service that may be purchased
11 under this subsection.

NOTE: This provision is amended to clarify that the total number of years of forfeited service that the person can purchase is the lesser of ten years, or a number of years equal to the current creditable service of the employe at the date of application.

12 **SECTION 26.** 40.25 (7) (a) 2. of the statutes is amended to read:

13 40.25 (7) (a) 2. The participant has at least 3 continuous years of creditable
14 current service under the fund at the time of application under subd. 1.

NOTE: This provision is amended to clarify that the participant must have had at least three continuous years of creditable current service at the time of applying to purchase creditable service for service as an employe of the federal government or for service with an employer that was not covered by the Wisconsin Retirement System during the period in which the service was performed but subsequently became a participating employer.

15 **SECTION 27.** 40.25 (7) (a) 3. of the statutes is amended to read:

16 40.25 (7) (a) 3. The number of years of creditable service applied for under this
17 paragraph does not exceed the number of years of creditable service that the
18 participant has at the date of application or 10 years, whichever is less. Creditable

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1 service previously purchased under this chapter may not be used to determine the
2 maximum amount of service that may be purchased under this subsection.

NOTE: This clarifies that the number of years of creditable service for service with the federal government or an employer that previously did not participate in the Wisconsin Retirement System, that the person can purchase may not exceed the lesser of ten years or a number of years equal to the current creditable service that the participant has, of the date of application.

3 **SECTION 28.** 40.26 (2) (a) of the statutes is amended to read:

4 40.26 (2) (a) The then present value of any portion of the terminated annuity
5 which was originally provided by employe or employer additional contributions or
6 tax-deferred additional contributions shall be credited to the corresponding
7 additional contribution account or tax-deferred additional contribution account.

8 **SECTION 29.** 40.26 (2) (b) of the statutes, as affected by 1999 Wisconsin Act 11,
9 is amended to read:

10 40.26 (2) (b) The amount of the annuity payments, excluding any portion
11 originally provided by additional contributions or tax-deferred additional
12 contributions, which would have been paid under the terminated annuity, if the
13 annuity had been a straight life annuity, prior to the participant's normal retirement
14 date or prior to the annuity termination date, whichever would first occur, shall be
15 credited to a memorandum account which is subject to s. 40.04 (4) (a) 2., 2g. and 2m.
16 and (c). If the annuity was recomputed under s. 40.08 (1m) because of a qualified
17 domestic relations order, the memorandum account established under this
18 paragraph shall be adjusted as provided under s. 40.08 (1m) (f) 2.

NOTE: The changes made by SECTION 28 and 29 in provisions on reentry into covered service, clarify that the provisions apply to both categories of additional contributions.

19 **SECTION 30.** 40.28 (1) (a) 1. of the statutes is amended to read:

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1 40.28 (1) (a) 1. The amount of the additional contribution accumulations and
2 tax-deferred additional contribution accumulations reserved for a variable annuity
3 as of the date the annuity begins;

NOTE: This change clarifies that the provision, relating to variable benefits, applies to both categories of additional contributions.

4 **SECTION 31.** 40.63 (9) (b) of the statutes is amended to read:

5 40.63 (9) (b) If a disability annuitant, prior to attaining the normal retirement
6 date for the annuitant's former participant classification, receives earnings or other
7 earned income from any source whatsoever for personal services, including services
8 performed on a contractual basis, the annuity shall be suspended, except for any
9 amount provided by additional contributions or tax-deferred additional
10 contributions, and no payment shall be payable after the first of the month in which
11 the earnings or earned income received during any calendar year exceed the amount
12 established under sub. (11), except that if payment was being made under sub. (4)
13 the annuity may only be suspended if the annuitant is employed in a law
14 enforcement or fire fighting capacity and then the suspension shall be effective
15 immediately. The suspended amount shall be reinstated on January 1 following the
16 date of suspension, or, if earlier, on the first day of the 2nd month following the
17 termination of personal services. An amount, which is reinstated in any calendar
18 year, other than on January 1 of the calendar year, shall again be suspended for any
19 subsequent month in the calendar year following a month in which the disability
20 annuitant receives any amount of earnings or earned income for personal services.
21 The department may request any earnings or compensation information as it deems
22 necessary to implement the provisions of this paragraph and par. (c).

NOTE: The change clarifies that provisions relating to suspension of disability annuities of persons who receive earnings from personal services do not apply to either category of additions contributions.

SENATE BILL 326**SECTION 32**

1 **SECTION 32.** 40.63 (10) of the statutes is amended to read:

2 40.63 (10) Upon termination of an annuity in accordance with sub. (9), each
3 participant whose annuity is so terminated shall, as of the beginning of the calendar
4 month following termination, be credited with additional contributions and
5 tax-deferred additional contributions equal to the then present value of the portion
6 of the terminated annuity which was originally provided by the corresponding type
7 of ~~additional~~ contributions. Except for additional contributions and tax-deferred
8 additional contributions, the retirement account of the participant shall be
9 reestablished as if the terminated annuity had never been effective, including
10 crediting of interest and of any contributions and creditable service earned during
11 the period the annuity was in force.

NOTE: The change to this provision, relating to disability annuities, clarifies that
it applies to both categories of additional contributions.

12 **SECTION 33.** 40.73 (1) (b) of the statutes is amended to read:

13 40.73 (1) (b) Upon the death of an annuitant, in addition to any amounts
14 payable by virtue of the annuity option elected by an annuitant, the amount
15 determined under par. (a) for contributions made under s. 40.05 (1) subsequent to the
16 effective date of the annuity, or additional contributions and tax-deferred additional
17 contributions not applied to provide an annuity, provided the amounts have not been
18 previously paid out as a lump sum under s. 40.25.

NOTE: This provision, relating to death benefits, is amended to provide that it
applies to both categories of additional contributions.

19 **SECTION 34.** 40.80 (2) (g) of the statutes is created to read:

20 40.80 (2) (g) Serve as trustee of any deferred compensation plan established
21 under this section and hold the assets and income of the plan in trust for the exclusive
22 benefit of the employes who participate in the plan and their beneficiaries.

