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2017 Joint Committee on Finance Paper #270

Domestic Partnerships and Employee Benefits
(Employee Trust Funds)

[LFB 2017-19 Budget Summary: Page 82, #1; Page 158, #3; and Page 460, #3]

CURRENT LAW

Under Chapter 40 of the statutes (Public Employee Trust Fund) state and local public employees covered under the Wisconsin Retirement System or participating in a group health insurance plan offered through the Department of Employee Trust Funds (ETF) are provided an option to enter into a domestic partnership (available to same sex and opposite sex partnerships) for the purpose of extending employee benefits to partners and dependents of partners. Under current law, programs for which domestic partners are provided certain benefits include: the state group health insurance program (covered dependents); the Wisconsin Retirement System (beneficiaries or survivors); the state group life insurance program (beneficiaries); duty disability benefits (survivors); and the deferred compensation program (beneficiaries).

GOVERNOR

Modify statutory provisions under Chapter 40 to discontinue providing an option to state and local public employees to enter into a domestic partnership for the purpose of extending certain employee benefits to partners and dependents of partners, effective July 1, 2017, or the date after publication of the bill, whichever is later.

Eliminate all health insurance coverage for domestic partners and dependents of domestic partners, effective January 1, 2018. For employees or retirees whose date of death is January 1, 2018, or later, eliminate domestic partner survivorship benefits under the duty disability program (available only to protective occupation category employees and their survivors) and modify the statutory standard sequence that applies when an employee or retiree dies in the case of absence of a written beneficiary designation to exclude domestic partners from receiving a deferred compensation benefit upon the death of their partner. [The bill does not modify the standard sequence of beneficiaries that would apply in the absence of a written designation of beneficiary for survivorship benefits other than deferred compensation and duty disability (such as Wisconsin Retirement System benefits or life insurance).] Delete statutory provisions which would allow a court to issue a domestic relations order assigning all or part of a participant's accumulated assets held in a deferred compensation plan to a domestic partner or former domestic partner to satisfy a family support obligation. Further, discontinue offering long-term care insurance policies through the Group Insurance Board to domestic partners of eligible employees or state annuitants.

Reduce funding to compensation reserves by $1,493,500 GPR in 2017-18 and $2,987,000 GPR in 2018-19 associated with reduced expenditures for family health insurance coverage for domestic partners of state employees other than employees of the University of Wisconsin (UW) System. Reduce funding to the UW System by $793,800 GPR in 2017-18 and $1,587,500 GPR in 2018-19 associated with family health insurance coverage for domestic partners of UW System employees.

DISCUSSION POINTS

1. This paper provides: (a) background information relating to current law provisions for domestic partner benefits; (b) the Governor's proposal to eliminate domestic partner benefits; (c) the number of Chapter 40 domestic partnerships over time; (d) a comparison with a number of other state employers (specifically, state universities) that currently provide or previously provided domestic partner benefits; (e) concerns that could be raised relating to the provision; and (f) alternatives for the Committee's consideration.

History of Policy and Governor's Proposal

2. Domestic partnership provisions were created under 2009 Act 28. Under Act 28, benefits that applied to spouses of state and local employees and retirees were extended to include domestic partners of employees and retirees. Additionally, Act 28 specified that Chapter 40 benefits be extended to both same sex and opposite sex partners.

3. An earlier version of the provision, which was included in 2005 Assembly Bill 503, would have allowed domestic partners (and children of domestic partners) of employees and retirees of the University of Wisconsin (UW) System to be considered dependents for the purpose of receiving employee benefits under Chapter 40 of the statutes. [Assembly Bill 503 was not adopted by the 2005 Legislature.] As is the case under current law, AB 503 would have extended domestic partnership benefits to opposite sex and same sex couples. In part, the purpose of the provision was to strengthen the ability of the UW System to compete with other colleges and universities as an employer to recruit and retain employees. Specifically, the benefits of UW-Madison were compared to benefits offered to employees of the Big Ten Conference. A comparison with the policies of these institutions is provided in a subsequent section of this paper.

4. With regard to the purpose of eliminating domestic partner benefits, the administration

indicates that "With the legalization of same-sex marriage in Wisconsin, Chapter 40 domestic partnership benefits are redundant. Under current law, members of domestic partnerships are now eligible to marry and, under the bill, must do so in order to continue to receive prospective spousal benefits."

5. The administration argues that domestic partner benefits are unnecessary due to the legalization of same-sex marriage. However, a review of the distribution of Chapter 40 domestic partnerships by type of partnership demonstrates that more than three-fourths of couples that register a domestic partnership are opposite sex couples, who were able to marry before the law was enacted. Further, Table 1 below shows that the total number and percentage share of opposite sex couples out of the total number of partnerships has increased over time. When Chapter 40 partnerships were first made available in 2010, almost 65% of registered partnerships were opposite sex. As of March, 2017, opposite sex partnerships comprise 78% of all registered partnerships. Given that the number and percentage of partnerships between members of the opposite sex have steadily increased over time, it could be argued that domestic partnership benefits have a value to employees that is distinct and separate from marriage.

TABLE 1

Domestic Partnerships Registered under Chapter 40 by Partnership Type, 2010 to 2017

Calendar Year	Opposite Sex Partnerships	Opposite Sex % of Total	Same Sex Partnerships	Same Sex % of Total	Total Partnerships
December 31, 2010	1,221	64.7%	665	35.3%	1,886
2011	1,524	65.7	794	34.3	2,318
2012	1,861	67.7	888	32.3	2,749
2013	2,256	69.6	987	30.4	3,243
2014	2,618	73.4	947	26.6	3,565
2015	2,972	76.0	938	24.0	3,910
2016	3,382	77.8	963	22.2	4,345
March, 2017	3,432	78.1%	962	21.9%	4,394

Chapter 40 Benefit Modifications

6. Under the bill, Chapter 40 domestic partnership registrations would be closed to new applications, effective July 1, 2017, or the date after publication of the bill, whichever is later. A domestic partnership is defined in Chapter 40 as a relationship between two individuals that satisfies all of the following: (a) each individual is at least 18 years old and otherwise competent to enter into a contract; (b) neither is married to, or in a domestic partnership with, another individual; (c) they are not biologically more closely related than would be allowed by law in the case of marriage; (d) they consider themselves to be members of each other's immediate family; (e) they agree to be responsible for each other's basic living expenses; and (f) they share a common residence. As noted above, domestic partnerships registered with ETF for benefits administration are not defined in

terms of the gender or sex of the partners and may, therefore, be between members of the opposite sex or members of the same sex. A domestic partnership established under this chapter of statutes may be terminated by either partner through a signed and notarized affidavit of termination of domestic partnership, which is submitted to ETF.

7. Table 2 summarizes the benefits that are modified or eliminated under the bill. The changes relate primarily to health insurance coverage for partners and dependents of partners, the standard sequence (described in the following section) for deferred compensation benefits distributed upon an employee or retiree's death, and duty disability survivor benefits for partners of protective occupation employees. As shown in the table, the only provisions which would result in reduced state or local employer costs are health insurance benefits.

TABLE 2

Summary of Bill Provisions Eliminating Domestic Partner Benefits

Chapter 40 Benefit	Modification under Bill	State Employer Contribution	State Employer Savings
Health Insurance			
Health Insurance Coverage for Domestic Partner of Active State Employee	Eliminate effective 1/2018	Employer share of premium	Yes
Health Insurance Coverage for Domestic Partner of State Retiree	Eliminate effective 1/2018	None	None (State retirees pay full premium)
Health Insurance Coverage for Domestic Partner of Local Government Employee or Local Government Retiree	Eliminate effective 1/2018	None	No state employer savings; local employer savings unknown
Health Insurance Option for Domestic Partner Survivor of Deceased Employee	Eliminate under bill as introduced (maintained under errata)	None	None (Survivors pay full premium)
Deferred Compensation			
Standard Sequence for Deferred Compensation Beneficiary	Exclude partners from standard sequence for deferred compensation when employee or retiree dies, effective 1/2018	None	None (Entirely employee-paid)
Domestic Relations Order	Exclude domestic partners and former domestic partners from deferred compensation domestic relations orders, effective 1/2018	None	None (Entirely employee-paid)
Other Benefits or Programs			
Duty Disability Survivor Benefits	Deaths 1/2018 or later not eligible for benefits	Benefits funded from Duty Disability Insurance Fund (Fiduciary Trust Fund)	None (Currently, no surviving partners receive duty disability benefits)
Long-Term Care Insurance	Discontinue offering policies for domestic partners on effective date of the bill	None	None (Entirely employee-paid)

8. *Health Coverage for Surviving Partners*. Under the bill, health insurance coverage for domestic partners of employees and for surviving domestic partners of deceased employees and deceased retired employees would no longer be available effective January 1, 2018, without regard for when the date the partnership was established and without regard for the date of death of the employee or retiree. Under current law, surviving domestic partners (and surviving spouses) of

deceased employees or retirees may elect to continue health insurance coverage and pay the full insurance premium after the death of a partner. Because surviving partners pay the full premium without an employer contribution, there is no cost to state employers to maintain this benefit. Currently, seven partners of already deceased employees or retirees have health insurance coverage through this statutory provision. The administration indicated in a March 31, 2017, errata letter to the Committee that the elimination of this benefit for surviving domestic partners under the bill was done in error. The letter indicated that the bill should be amended to correct the error by reinstating benefits for surviving domestic partners who were covered by a state group health plan at the time of the death of the employee (or retiree), which are paid in full by the surviving partner without an employer contribution. This correction would be consistent with the argument that, in general, individuals may marry if they wish to continue benefits, given that the affected surviving partners do not have this option. Adopting the errata would have no fiscal effect for state or local employers.

9. *Other Health Insurance Provisions*. Health insurance coverage would also be unavailable to stepchildren of a domestic partnership. Health insurance benefits would no longer be permitted to include special provisions for domestic partners where one domestic partner, and not the other, is eligible for Medicare. Under the bill, an employee who is eligible for group health insurance and was a domestic partner in a dissolved domestic partnership (or is divorced) may not enroll a new spouse in a group health insurance plan until six months have elapsed since the date of the dissolved domestic partnership (or divorce). Current law prohibits an employee who was a domestic partner in a dissolved domestic partnership (or is divorced) from enrolling a new partner (or new spouse) in a group health insurance plan until six months have elapsed since the date of the dissolved domestic partnership (or divorce).

10. *Deferred Compensation.* The deferred compensation program is a supplemental retirement savings program authorized under Section 457 of the Internal Revenue Code. Contributions are made by employees and are not matched by any employer contributions. Under current law, in the absence of a written designation of beneficiary, or if all designated beneficiaries who survive the decedent die before filing a beneficiary designation with ETF applicable to that death benefit or an application for any death benefit payable, the beneficiary is determined in the following sequence: (a) Group 1, surviving spouse or surviving domestic partner; (b) Group 2, children of the deceased participant, employee, or annuitant, in equal shares; (c) Group 3, parent, in equal shares if both survive; and (d) Group 4, brother and sister in equal shares. Under the bill, the same standard sequence would apply to WRS benefits, but would be modified to exclude domestic partners from Group 1 with regard to receiving a deferred compensation benefit upon the death of their partner, effective January 1, 2018. Additionally, the bill would delete statutory provisions that allow a court to issue a domestic relations order assigning all or part of a participant's accumulated assets held in a deferred compensation plan to a domestic partner or former domestic partner to satisfy a family support obligation. As noted in Table 2 above, deferred compensation benefits are entirely employee-paid.

11. *Duty Disability Survivorship Benefits*. Under the bill, payment of duty disability death benefits would be maintained for domestic partner survivors of employees whose date of death occurred prior to January 1, 2018, but would not be available if the date of death occurred January 1, 2018, or later. Because duty disability benefits are paid from a trust fund to which contributions

are made by employers over time based on an employee's protective occupation status, the bill does not assume any state employer savings associated with this provision. Additionally, no surviving domestic partners currently receive duty disability death benefits.

12. *Chapter 770*. The bill does not eliminate or modify any of the rights or obligations of domestic partnerships established under Chapter 770 of the statutes. Chapter 770 domestic partnerships are separate and distinct from Chapter 40 domestic partnerships and are limited to same sex partners. Domestic partnerships created under Chapter 770 have no bearing on Chapter 40. In addition, if modifications were made to Chapter 770, no state employer cost reductions would result. Therefore, this description is provided for informational purposes only.

Under Chapter 770, two individuals may enter into a domestic partnership if each is at least 18 years old and able to consent to the domestic partnership; neither is married to, or in a domestic partnership with, another individual; they share a common residence; they are not more closely related to one another than second cousins (biologically or by adoption); and they are members of the same sex. Statute affords various rights and obligations to domestic partners who register under Chapter 770, including but not limited to: (a) accompaniment or visitation to a care or service residential facility; (b) consenting to proposed admission of an incapacitated domestic partner to a care or service residential facility; (c) hospital visitation; (d) access to treatment records created in the course of providing services for mental illness or developmental disabilities; (e) exemption from real estate transfer fees for transfers between partners; (f) death benefits for certain employees under particular circumstances; (g) power of attorney; (h) ownership of a cemetery lot or mausoleum space; and (i) victim notification by the Department of Corrections.

Health Insurance Reductions

13. As noted previously, the bill reduces funding to compensation reserves and the UW System in relation to this provision. The basis of the administration's estimates was information provided by the UW System and DOA's Division of Personnel Management regarding the number of UW employees (353) and other state employees (544) with family health insurance coverage extended to domestic partners of the employees. It was estimated that the employer contribution for each employee would be $1,547 per month for family coverage and $623 per month for single coverage. In calculating the state employer cost of health insurance for the employees under the bill, it was assumed that all employees would have single coverage, effective January 1, 2018. The difference between family and single coverage for 897 employees was then assumed to be state employer savings that would result on an all-funds basis. Applying percentages of 49.5% for GPR funding to compensation reserves and 40.6% for GPR funding to the UW System, savings were estimated at $1,493,500 GPR in 2017-18 and $2,987,000 GPR in 2018-19 for compensation reserves and $793,800 GPR in 2017-18 and $1,587,500 GPR in 2018-19 for the UW System. The bill estimates are shown in more detail in Table 3 below.

TABLE 3

Health Insurance Coverage Estimates for State and UW System Employees with Domestic Partners Governor (AB 64/SB 30)

	Compensation Reserves				UW System			
	2017 (Current Law)	2017-18	2018-19	Biennium	2017 (Current Law)	2017-18	2018-19	Biennium
Family Premium Cost	$10,098,800	$5,049,400	$0	$5,049,400	$6,553,100	$3,276,600	$0	$3,276,600
Single Premium Cost	0	2,033,500	4,066,900	6,100,400	0	1,319,500	2,639,000	3,958,500
Total Premium Cost	$10,098,800	$7,082,900	$4,066,900	$11,149,800	$6,553,100	$4,596,100	$2,639,000	$7,235,100
Premium Reduction (All Funds)		-$3,015,900	-$6,031,900	-$9,047,800		-$1,957,000	-$3,914,100	-$5,871,100
GPR Reduction		-1,493,500	-2,987,000	-4,480,500		-793,800	-1,587,500	-2,381,300

	Total State		
	2017-18	2018-19	Biennium
Family Premium Cost	$8,326,000	$0	$8,326,000
Single Premium Cost	3,353,000	6,705,900	10,058,900
Total Premium Cost	$11,679,000	$6,705,900	$18,384,900
Premium Reduction (All Funds)	-$4,972,900	-$9,946,000	-$14,918,900
GPR Reduction	-2,287,300	-4,574,500	-6,861,800

14. As noted above, the estimates in the bill assume that all employees with family coverage extended to domestic partners would have single coverage beginning January 1, 2018. However, a significant number of affected state employees have other eligible dependents who would still qualify for family coverage under the bill. Table 4 below shows that the number of state employee family contracts in 2017 is 1,081 (648 state employees in various agencies, 349 UW System employees, and 85 graduate assistants). The table, further, shows that nearly half of affected employees have other eligible dependents: 344 state employees in various agencies, 150 UW System employees, and 11 graduate assistants. Under the bill, these employees would continue to qualify for family coverage for other eligible dependents, but the domestic partner of the employee (who may be a biological parent or caretaker of the eligible dependent) would no longer be a covered dependent. Employer expenses associated with these employees would not be reduced under the bill. Finally, as a percentage of total employees and retirees that participate in a health plan administered by ETF (approximately 242,000 including UW Hospital and Clinics employees and UW graduate assistants), the number of employees and retirees with family coverage that includes a domestic partner (1,658) is approximately 0.7%, while the number of cases in which family coverage is provided to a domestic partner and the employee or retiree does not have another eligible dependent (903) is approximately 0.4%.

TABLE 4

Domestic Partnerships with Family Health Insurance Coverage and Number of Members with Other Eligible Dependents, 2017

Employer Type	Members with Other Dependents	Percent with Other Dependents	Total Partnerships	Employer Contribution
State Agency (Non-UW)	344	53.1%	648	Yes
UW System	150	43.0	349	Yes
Local Government Active and Retiree	154	51.5	299	Varies
UW Hospital and Clinics	95	51.9	183	Yes*
UW Graduate Assistant	11	13.1	84	Yes
State Retiree	1	1.1	95	No
Total	755	45.5%	1,658	

*UW Hospital and Clinics expenses are not made from state appropriations.

15. To account for the increase in number of family policies and the significant number of affected employees who would continue to qualify for family coverage under the bill, Table 5 provides a reestimate of state employer cost reductions. The reestimate maintains the administration's estimate of the employer cost for a single policy ($623 per month) while updating the estimate of the employer contribution for family policies based on data provided by ETF for actual employer contributions for domestic partner family coverage paid in March, 2017: $1,592 per month for state agencies generally, and $1,488 per month for the UW System. Bill funding would increase by $2,517,600 GPR over the biennium under the reestimate.

TABLE 5

Health Insurance Coverage Estimates for State and UW System Employees with Domestic Partners Reestimate Based on Family Coverage for Other Eligible Dependents

	Compensation Reserves				UW System			
	2017 (Current Law)	2017-18	2018-19	Biennium	2017 (Current Law)	2017-18	2018-19	Biennium
Family Premium Cost	$12,382,200	$9,477,700	$6,573,300	$16,051,000	$7,731,300	$5,303,000	$2,874,700	$8,177,700
Single Premium Cost	0	1,136,400	2,272,700	3,409,100	0	1,016,700	2,033,500	3,050,200
Total Premium Cost	$12,382,200	$10,614,100	$8,846,000	$19,460,100	$7,731,300	$6,319,700	$4,908,200	$11,227,900
Premium Reduction (All Funds)		-$1,768,100	-$3,536,200	-$5,304,300		-$1,411,600	-$2,823,100	-$4,234,700
GPR Reduction		-875,600	-1,751,100	-2,626,700		-572,500	-1,145,000	-1,717,500
Change to Bill		617,900	1,235,900	1,853,800		221,300	442,500	663,800

	Total State		
	2017-18	2018-19	Biennium
Family Premium Cost	$14,780,700	$9,448,000	$24,228,700
Single Premium Cost	2,153,100	4,306,200	6,459,300
Total Premium Cost	$16,933,800	$13,754,200	$30,688,000
Premium Reduction (All Funds)	-$3,179,700	-$6,359,300	-$9,539,000
GPR Reduction	-1,448,100	-2,896,100	-4,344,200
Change to Bill	839,200	1,678,400	2,517,600

16. It should be noted that the estimate shown in Table 5 above does not account for either of the following: (a) the number of marriages that may take place between employees and their domestic partners between July, 2017, and June, 2019, which could reduce the number of policies assumed to be single (marriage is a qualifying life change event; an individual may elect family coverage within 30 days of the marriage); or (b) cases of partnerships between two state employees. Under the bill, costs could increase associated with domestic partnerships between state employees who are currently covered under one family policy, if either of the employees has another eligible dependent. In other words, while Table 4 shows that in some cases, employers would continue to pay for family coverage for a dependent such as a child, there may be cases where the partner of the employee shown in the table is also a state employee. In such a case, state employers could ultimately pay for a single policy and a family policy, or even two family policies if both partners are state employees with other eligible dependents (two divorced individuals each with a child from a prior marriage, for example). It is also possible for two single policies to be more expensive together than the cost of one family policy, depending on the health plan chosen by each employee, as health plan premiums vary.

Duty Disability

17. The duty disability program administered by ETF is an income replacement program for protective occupation employees. Protective occupations are specified under s. 40.02(48) of the statutes, including law enforcement, fire suppression or prevention, and other positions for which

duties require frequent exposure to a high degree of danger or peril and which require a high degree of physical conditioning. Under certain circumstances, a protective occupation participant is entitled to a duty disability benefit if the employee is injured while performing his or her duty or contracts a disease due to his or her occupation. Generally, an individual who is eligible to receive duty disability benefits may apply and receive a monthly payment equal to a percentage of the employee's monthly salary as of the qualifying date. The applicable percentage depends on the individual's circumstances, including whether the employer is the state or a local government. Under current law, duty disability benefits may be payable to a surviving domestic partner if the protective occupation employee dies as a result of the work-related injury or disease. The bill would exclude domestic partners from receiving a duty disability death benefit if the death occurred on or after January 1, 2018.

18. Table 6 below provides the number of domestic partnerships with at least one partner who is employed in a protective occupation. As shown in the table, 514 domestic partnerships are between two people of which one is in a protective occupation, while 55 domestic partnerships are between two protective occupation employees.

TABLE 6

Domestic Partnerships Including a Protective Occupation Employee or Retiree (One or Both Partners), 2017

Employer Type	One Partner Protective	Both Partners Protective	Total Partnerships
State	342	30	372
Local	172	20	192
One State, One Local	0	5	5
Total	514	55	569

19. As noted previously, duty disability benefits are paid from a fiduciary trust fund to which contributions are made by employers over time based on an employee's protective occupation status and the bill does not assume any state employer savings associated with this provision. Additionally, ETF staff has indicated that although there are currently individuals who would be eligible to receive a duty disability death benefit if their domestic partner died, few (if any) domestic partners have received benefits under this provision in the past and no surviving partners receive duty disability benefits currently. Therefore, the exclusion of domestic partners from receiving duty disability benefits under the bill is not assumed to result in reduced employer contribution rates.

Big Ten Comparison

20. The Big Ten Conference of intercollegiate athletics has 14 university members. All members of the Big Ten provided benefits to domestic partners of employees prior to 2013. Table 7 provides information relating to the nine universities, including the University of Wisconsin, that still provide benefits to domestic partners as well as the types of partnerships covered (same sex only or same sex and opposite sex). As shown in the table, six of the nine universities that continue

to provide benefits to domestic partners do so for opposite sex couples as well as same sex couples. The remaining three schools provide benefits to same sex domestic partners only.

TABLE 7

Comparison of Big Ten Conference Members with Current Domestic Partner Health Insurance Coverage, 2017

School Name	Partnership Covered
Illinois, University of	Same Sex and Opposite Sex
Iowa, University of	Same Sex and Opposite Sex
Michigan, University of	Same Sex and Opposite Sex
Michigan State University	Same Sex
Nebraska, University of	Same Sex and Opposite Sex
Northwestern University	Same Sex and Opposite Sex
Ohio State University	Same Sex
Rutgers University	Same Sex
Wisconsin, University of	Same Sex and Opposite Sex

21. The remaining five universities (or states) chose to discontinue benefits provided to domestic partners of employees. Table 8 provides for each university the type of partnership for which benefits were previously provided, the date of the decision to discontinue providing benefits, the effective date upon which coverage ended, and the effective delay between the date of notification to affected employees that benefits would no longer be provided and the date that benefits ended. As a point of comparison, the University of Wisconsin is included in the table as proposed under the bill. The comparison raises two issues: first, that the University of Wisconsin would be the first of the Big Ten universities that covered both same sex and opposite sex partners to discontinue providing such coverage; and second, that Wisconsin would give affected employees the shortest period of notice in comparison to the other five schools. Four of the five universities provided more than a year for their employees to prepare for the policy change; two of the four provided two years.

TABLE 8

Comparison of Big Ten Conference Members that Discontinued Domestic Partner Benefits

School Name	Previously Covered	Date of Decision	End of Coverage	Effective Delay
Indiana University	Same Sex	October, 2015	January, 2017	15 months
Maryland, University of	Same Sex	May, 2013	January, 2014	8 months
Minnesota, University of	Same Sex	November, 2013	January, 2015	14 months
Pennsylvania State University	Same Sex	July, 2015	July, 2017	24 months
Purdue University	Same Sex	December, 2015	January, 2017	24 months
Wisconsin, University of (Proposed)	Same Sex and Opposite Sex	July, 2017	January, 2018	6 months

Points for Consideration

22. State statute specifies that the purpose of the public employee trust fund is, in part:

> […] to aid public employees in protecting themselves and their beneficiaries against the financial hardships of old age, disability, death, illness and accident, thereby promoting economy and efficiency in public service by facilitating the attraction and retention of competent employees, by enhancing employee morale, by providing for the orderly and humane departure from service of employees no longer able to perform their duties effectively, by establishing equitable benefit standards throughout public employment, by achieving administrative expense savings and by facilitating transfer of personnel between public employers.

Chapter 40 serves both practical purposes to attract and retain competent employees to promote economy and efficiency in public service, as well as serving to protect employees and their beneficiaries from financial hardship and to establish equitable benefit standards. It could be argued that the benefits provided under current law, likewise, serve multiple purposes. Given that over 78% of current domestic partnerships are opposite sex couples, some may argue that the benefit would seem to provide a function that is different from marriage, and would not be affected by court decisions regarding same sex marriage.

23. When reviewing the issue of domestic partnerships, the following broader societal factors may be relevant:

- A report on the National Longitudinal Survey of Youth 1979, a survey of over 7,000 individuals who were born between 1957 and 1964, found that 44.8% of persons who had ever married had also experienced a divorce by age 46. Many individuals who were born after this cohort, including the offspring of the cohort, experienced the divorce of their parents. While some marriages end with the mutual agreement of the parties involved, this is not always the case.

- Additionally, marriages may end in the death of a spouse, sometimes early in life. According to a Pew Research Center report from 2010, when survey respondents who were divorced or widowed were asked the question "Do you want to get married again, don't you want to get married again, or are you not sure if you want to get married again?" 22% reported that they want to marry; 46% said they do not want to marry; and 32% indicated they were not sure.

- While divorced and widowed individuals may have various reasons for not wanting to marry, one reason particular to Wisconsin is the effect a marriage can have on the rights of inheritance for children from a prior marriage. In other cases, individuals may choose not to remarry out of consideration for a deceased spouse, for religious reasons, or because of previous difficult relationship experiences.

- While many couples who wish to marry are received and encouraged by their respective families to make this commitment, other couples may find opposition or resistance to the decision from parents, children, or other family. In some cases, objections may be to a prospective spouse's religious practices. In other cases, the disapproval could relate to the prospective spouse's educational attainment, country of origin, ethnicity, or race. In particular, with regard to the stated intent of the budget provision, although same sex couples may now legally marry, family opposition on the grounds of sexual orientation continues to be a practical matter faced by many individuals.

24. Individuals under various circumstances who are not married may appreciate the long-term exchange of support, companionship, and care for another person with whom they reside. Chapter 40 partnerships require that the partners: "consider themselves to be members of each other's immediate family," that they "agree to be responsible for each other's basic living expenses," and that "they share a common residence." In other words, under current law, domestic partners form a household which they consider family and they agree to be responsible for their partner financially. It could be argued that the health, happiness, and general well-being of an employee and their family unit can positively influence the productivity of the employee in the workplace.

Potential Modifications

25. A number of modifications to the recommended provisions could be considered by the Committee. In particular, it should be noted that in addition to the issues raised above, complaints and legal challenges relating to the provisions could be brought by individuals who have already registered a partnership. Issues that could be raised may include: contractual rights such as specified under s. 40.19(1) of the statutes; property rights, which duty disability benefits could be argued to include, as employers contribute to the fiduciary trust fund over the course of an individual's employment; allegations of discrimination on the basis of marital status (which is protected in Wisconsin); or for other reasons. To the extent that the bill provisions are limited in scope, this could mitigate the risk of legal challenges to the state that may result.

26. Given the administration's reasoning that all people can now legally marry, that the elimination of health insurance coverage would reduce state (and local) expenditures, and that affected employees and retirees would have approximately six months' notice, the Committee could approve the Governor's recommendation with the errata (which would allow partners of deceased employees or deceased retirees to continue paying the full premium for health insurance under a plan administered by ETF). Given that approximately half of state employees in a domestic partnership would still qualify for family coverage due to a dependent, savings would be less than initially estimated by the administration. Therefore, if the Committee approves the recommendation, savings would be reestimated to account for this information. [Alternative 1]

27. It is possible that a case could arise in which a protective occupation employee is injured or contracts a disease in the course of their employment prior to January 1, 2018, that would qualify for duty disability benefits and which could cause difficulties for partners who wish to marry. For example, the individual could be hospitalized or could become mentally impaired. Under the bill, if the individual died as a result of the work-related injury or disease on or after January 1, 2018, the individual's surviving partner would not receive a duty disability death benefit. In addition, if a protective occupation participant is currently disabled and in a domestic partnership with an individual who was their partner prior to becoming disabled, it is unclear whether the partners could marry to ensure that the partner would be eligible as a surviving spouse to receive a death benefit. To address these issues, the Committee could: (a) specify that duty disability death benefits remain available to surviving partners of protective occupation employees whose work-related injury or disease occurred on or before December 31, 2017 (rather than employees whose

date of death is prior to January 1, 2018); and (b) specify that if the surviving spouse of a protective occupation participant was either the spouse or the domestic partner of the participant when the participant became disabled, the surviving spouse may be eligible for a death benefit. Under this alternative, a duty disability death benefit could be provided to a domestic partner of a protective occupation employee who died on or after January 1, 2018, if the work-related injury or disease occurred prior to January 1, 2018, and if the surviving spouse was in a domestic partnership with the participant before the disability occurred, to marry their domestic partner and potentially qualify for a death benefit as a surviving spouse. [Alternative 2]

28. If the Committee wishes to reduce state expenditures while maintaining current law provisions that have no state fiscal effect, it could discontinue Chapter 40 domestic partnership registrations effective July 1, 2017, and delete: (a) provisions that have no state fiscal effect (that is, only eliminate health insurance coverage for state active employees' domestic partners) [Alternative 3a]; or (b) provisions that have no state or local fiscal effect (maintain current law for partners of deceased employees or retirees, state retirees, duty disability death benefits, deferred compensation standard sequence, deferred compensation domestic relations orders, and long-term care insurance policies) [Alternative 3b]. This alternative could reduce potential employee and retiree confusion; reduce the number of potential complaints and legal challenges that could be brought; and maintain the intent of employees or retirees and their partners in submitting an affidavit to ETF.

29. There are several reasons the Committee could consider delaying the effective date for any provision relating to health insurance coverage to July 1, 2018, to provide 12 months' notice [Alternative 4a]; January 1, 2019, to provide 18 months' notice [Alternative 4b]; or July 1, 2019, to provide 24 months' notice [Alternative 4c]. First, it is common for many individuals planning to marry to take up to 12 months to plan and save for wedding expenses. Second, delaying the effective date could give domestic partners time to prepare in other ways, which could include: (a) discussing with their partners what marriage means to them; (b) seeking counseling such as premarital counseling or therapy; (c) announcing an engagement to family; (d) listening and responding to family members' input such as input from parents and children; and (e) seeking legal counsel for complicated family or financial matters (such as ensuring that children from a prior marriage maintain specific rights to inheritance). Third, as noted in the comparison above, four of five other state university employers that have eliminated benefits for domestic partners provided at least one year for their employees to prepare for the policy change. In the case of Pennsylvania State University and Purdue University, the employers provided two years' notice to affected employees.

30. If the Committee wishes to reduce state employer expenditures while also allowing the partners of employees to receive health insurance coverage, it could allow employees with domestic partners to elect family coverage and specify that no employer contribution could be made for the difference in cost between single coverage and family coverage for the health plan selected if the employee has no other eligible dependents that would qualify for family coverage. For example, if an employee with no other dependents selected family coverage under a Tier 1 plan that has a total single premium of $700 per month and total family premium of $1,700 per month, the employee would be required to pay both the single employee premium (for example, $85 per month in 2017 in most cases) and an additional $1,000. This alternative would have the same state fiscal effect as Alternative 1, but would provide employees and their partners, including partners' dependents, with

an option to pay more for family coverage. [Alternative 5]

31. The Committee could consider discontinuing the option to register Chapter 40 domestic partnerships while maintaining current law provisions for domestic partnerships that are currently in effect, until terminated. While expenditures for family health insurance coverage would continue, this alternative could have a lower risk of legal challenges by employees and retirees and could be considered equitable to employees who have already registered domestic partnerships. In future years, as domestic partnerships are terminated by partners for various reasons or are no longer actively employed, state expenditures for health insurance benefits could be expected to decrease. [Alternative 6]

32. Finally, it could be argued that Chapter 40 domestic partner benefits: continue to be relevant to employee benefits, as evidenced by domestic partner benefits policies of eight of the 13 Big Ten universities other than the University of Wisconsin that have been maintained; may provide an effective tool for state employers to recruit and retain valuable employees; and provide for the health, well-being, and happiness of employees' family units, and employees themselves by extension. Therefore, the Committee could delete the provisions and maintain current law. [Alternative 7]

ALTERNATIVES

All Alternatives include errata regarding surviving partners [no fiscal effect].

1. Approve the Governor's recommendation, as modified by the errata to: (a) discontinue registration for Chapter 40 domestic partnerships; (b) eliminate health insurance coverage for Chapter 40 domestic partners and their dependents (includes partners of local employees, retirees); (c) maintain current law regarding surviving domestic partners of deceased employees and deceased retirees (no fiscal effect); (d) exclude domestic partners from the standard sequence for deferred compensation; (e) exclude domestic partners from domestic relations orders that can assign all or part of a participant's accumulated assets held in a deferred compensation plan; (f) eliminate duty disability survivorship benefits for domestic partners of employees who die after January 1, 2018; and (g) discontinue offering long-term care insurance policies through to domestic partners. In addition, reestimate expenditure reductions to reflect the number of cases in which affected state employees may still qualify for family coverage (for example, if the employee has a child who is a dependent). [The reestimate is a technical correction based on data provided relating to the actual number of active state employees in a domestic partnership who have family coverage and who would continue to be eligible for family coverage for a dependent such as a child.]

ALT 1	Change to Base	Change to Bill
GPR	- $4,344,200	$2,517,600

2. Modify the provision relating to duty disability benefits to specify that the effective date of January 1, 2018, apply to the date on which the protective occupation employee experienced

a work-related injury or was diagnosed with a work-related disease rather than the date of the death of the employee. In addition, specify that if the surviving spouse of a protective occupation participant was either the spouse or the domestic partner of the participant when the participant became disabled, the surviving spouse may be eligible for a death benefit. [This alternative would allow a protective occupation employee who is already disabled or who becomes disabled before January 1, 2018, and was in a domestic partnership with their partner before becoming disabled, to marry their domestic partner so that the partner would qualify for a death benefit as a surviving spouse.]

3. Modify the provision to:

a. Only eliminate health insurance coverage for domestic partners of active state employees. Specify that current law provisions relating to health insurance for individuals other than active state employees be maintained. As under the bill, registration for Chapter 40 domestic partnerships would be closed effective July 1, 2017. Fiscal effect would be equal to the effect of Alternative 1.

ALT 3a	**Change to**	
	Base	**Bill**
GPR	- $4,344,200	$2,517,600

b. Only eliminate health insurance coverage for domestic partners of active state employees, local employees, and local retirees. Specify that current law provisions relating to health insurance for individuals other than active state employees, local employees, and local retirees be maintained. As under the bill, registration for Chapter 40 domestic partnerships would be closed effective July 1, 2017. Fiscal effect would be equal to the effect of Alternative 1.

ALT 3b	**Change to**	
	Base	**Bill**
GPR	- $4,344,200	$2,517,600

4. Specify that the effective date for any provision relating to health insurance be delayed to allow partners and their families to prepare, discuss, and plan for the policy change to:

a. July 1, 2018 [12 months notice]

ALT 4a	**Change to**	
	Base	**Bill**
GPR	- $2,896,100	$3,965,700

b. January 1, 2019 [18 months notice]

ALT 4b	Change to	
	Base	Bill
GPR	- $1,448,100	$5,413,700

c. July 1, 2019 [24 months notice]

ALT 4c	Change to	
	Base	Bill
GPR	$0	$6,861,800

5. Modify the provision to specify that active state employees may elect family coverage for domestic partners and partners' dependents, but that the employee must pay the difference between the full single premium and full family premium if the employee would not otherwise qualify for family coverage. As under the bill, registration for Chapter 40 domestic partnerships would be discontinued effective July 1, 2017. Fiscal effect would be equal to the effect of Alternative 1. [The alternative would maintain the employer contribution for single coverage while offering the option to cover partners, which would be similar but not identical to current law provisions that require retirees, surviving spouses, and surviving domestic partners to pay the full insurance premium.]

ALT 5	Change to	
	Base	Bill
GPR	- $4,344,200	$2,517,600

6. Modify the provision to delete changes other than the provision to end registration for new partnerships effective July 1, 2017. Domestic partners in partnerships that were established prior to July 1, 2017, would continue to be eligible for health insurance coverage.

ALT 6	Change to	
	Base	Bill
GPR	$0	$6,861,800

7. Delete provision (maintain current law).

ALT 7	Change to	
	Base	Bill
GPR	$0	$6,861,800

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