



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0244/1
RAC:cjs:jm

DOA:.....Waterman, BB0006 – IRC Compliance of WRS

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

RETIREMENT AND GROUP INSURANCE

The Wisconsin Retirement System (WRS) is currently established as a governmental plan and as a qualified plan for federal income tax purposes under the Internal Revenue Code (IRC). In addition, under current law, no WRS benefit plan may be administered in a manner which violates a provision of the IRC that authorizes or regulates the benefit plan or that would cause an otherwise tax exempt benefit to become taxable under the IRC. This bill updates and conforms numerous provisions governing WRS benefits and the administration of the WRS to the IRC.

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* 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:

SECTION 1. 40.015 (1) of the statutes is amended to read:

40.015 (1) The Wisconsin retirement system is established as a governmental plan and as a qualified plan for federal income tax purposes under the ~~internal revenue code~~ Internal Revenue Code and shall be so maintained and administered.

SECTION 2. 40.015 (2) of the statutes is amended to read:

40.015 (2) No benefit plan authorized under this chapter may be administered in a manner which violates an ~~internal revenue code~~ Internal Revenue Code provision that authorizes or regulates that benefit plan or which would cause an otherwise tax exempt benefit to become taxable under the ~~internal revenue code~~ Internal Revenue Code.

SECTION 3. 40.015 (3) of the statutes is created to read:

40.015 (3) For the purposes of compliance with the Internal Revenue Code, the plan year is January 1 through December 31.

SECTION 4. 40.02 (18g) of the statutes is amended to read:

40.02 (18g) “Deferred compensation plan” means a plan which is in accordance with section 457 of the ~~internal revenue code~~ Internal Revenue Code, under which an employer executes an agreement by which an employee voluntarily agrees to defer a part of gross compensation for payment at a later date. Deferred compensation plan does not include annuity plans specified under section 403 (b) of the ~~internal revenue code~~ Internal Revenue Code.

SECTION 5. 40.02 (31) of the statutes is created to read:

40.02 (31) “Federal annual compensation limits” means any annual compensation limit under section 401 (a) (17) of the Internal Revenue Code, as adjusted for any cost of living increases under section 401 (a) (17) (B) of the Internal Revenue Code, but only with respect to plan years beginning after December 31, 1995, and only with respect to individuals who first became participating employees

in plan years beginning after December 31, 1995. This subsection shall be applied in compliance with section 401 (a) (31) of the Internal Revenue Code pursuant to any applicable federal regulations or guidance adopted under the Internal Revenue Code.

SECTION 6. 40.02 (33) (a) 1. of the statutes is amended to read:

40.02 (33) (a) 1. The participant's total earnings received or considered to be received under sub. (22) (e), (ef), or (em) and for which contributions are made under s. 40.05 (1) and (2) during the 3 annual earnings periods (excluding any period more than 3 years prior to the effective date for any participating employer) in which the earnings were the highest, subject to the federal annual compensation limits under ~~26 USC 401~~ (a) (17) for a participating employee who first becomes a participating employee on or after January 1, 1996; by

SECTION 7. 40.02 (33) (b) 1. of the statutes is amended to read:

40.02 (33) (b) 1. For a state elected official who is prohibited by law from receiving an increase in compensation during the official's term of office and who so elects, one-twelfth of the annual salary, subject to the federal annual compensation limits under ~~26 USC 401~~ (a) (17) for a participating employee who first becomes a participating employee on or after January 1, 1996, which would have been payable to the participant during the last completed month in which the participant was a participating employee in such a position if the participant had not been prohibited by law from receiving an increase in salary during his or her term of office, but only with respect to service as a state elected official.

SECTION 8. 40.02 (33) (c) of the statutes is amended to read:

40.02 (33) (c) For a participant who makes an election under s. 40.30 (2), the monthly rate of earnings applicable under par. (a) or (b), increased as provided under

s. 40.30 (4) (b) but subject to the federal annual compensation limits under 26 USC 401 (a) (17) for a participating employee who first becomes a participating employee on or after January 1, 1996.

SECTION 9. 40.02 (39m) of the statutes is amended to read:

40.02 (39m) “Internal revenue code Revenue Code” means the federal internal revenue code Internal Revenue Code of 1986, under Title 26, USC, as amended, and applicable federal regulations adopted by the federal department of the treasury, including temporary regulations.

SECTION 10. 40.02 (48g) of the statutes is renumbered 40.02 (25g) and amended to read:

40.02 (25g) “Public Eligible retired public safety officer” has the meaning given in 26 USC section 402-(I) (1) (4) (C) (B) of the Internal Revenue Code.

SECTION 11. 40.02 (48m) (e) of the statutes is amended to read:

40.02 (48m) (e) The determination of the alternate payee share does not require that benefits be paid to the alternate payee if those benefits are also required to be paid to another alternate payee or to the internal revenue service under a lien placed on the participant’s account under 26 USC section 64 of the Internal Revenue Code.

SECTION 12. 40.03 (1) (am) of the statutes is amended to read:

40.03 (1) (am) Shall ensure that the Wisconsin retirement system complies with the internal revenue code Internal Revenue Code as a qualified plan for income tax purposes and shall ensure that each benefit plan is administered in a manner consistent with all internal revenue code Internal Revenue Code provisions that authorize and regulate the benefit plan.

SECTION 13. 40.03 (2) (t) of the statutes is amended to read:

40.03 (2) (t) Shall ensure that the Wisconsin retirement system complies with the internal revenue code Internal Revenue Code as a qualified plan for income tax purposes and shall ensure that each benefit plan is administered in a manner consistent with all ~~internal revenue code~~ Internal Revenue Code provisions that authorize and regulate the benefit plan.

SECTION 14. 40.04 (10) of the statutes is amended to read:

40.04 (10) An accumulated sick leave conversion account shall be maintained within the fund, to which shall be credited all money received under s. 40.05 (4) (b), (bc), (bf), (bm), (br), and (bw) for health insurance premiums, as dividends or premium credits arising from the operation of health insurance plans and from investment income on any reserves established in the fund for health insurance purposes for retired employees and their surviving dependents, and for the payment of any employer share of OASDHI contributions for sick leave credits used to pay health insurance premiums for dependents who are not tax dependents under the Internal Revenue Code. Premium payments to health insurers authorized in s. 40.05 (4) (b), (bc), (bf), (bm), and (bw) shall be charged to this account. This subsection does not prohibit the direct payment of premiums to insurers when appropriate administrative procedures have been established for direct payments.

SECTION 15. 40.04 (11) of the statutes is amended to read:

40.04 (11) A health insurance premium credit account shall be maintained within the fund, to which shall be credited all moneys received under s. 40.05 (4) (by) for the payment of health insurance premiums, as dividends or premium credits arising from the operation of health insurance plans and from investment income on any reserves established in the fund for health insurance purposes for retired employees and their surviving dependents, and for the payment of any employer

share of OASDHI contributions for health insurance premium credits used to pay health insurance premiums for dependents who are not tax dependents under the Internal Revenue Code. Premium payments to health insurers authorized in subch. IX may only be charged to this account after all other health insurance premium credits under s. 40.05 (4) (b), (bc), (bf), (bm) and (bw) are exhausted. This subsection does not prohibit the direct payment of premiums to insurers when appropriate administrative procedures have been established for direct payments.

SECTION 16. 40.05 (1) (intro.) of the statutes is amended to read:

40.05 (1) EMPLOYEE RETIREMENT CONTRIBUTIONS. (intro.) For Wisconsin retirement system purposes employee contributions on earnings for service credited as creditable service shall be subject to ~~the federal~~ annual compensation limits under ~~26 USC 401~~ (a) (17) for a participating employee who first becomes a participating employee on or after January 1, 1996, and shall be made as follows:

SECTION 17. 40.05 (1) (a) 5. of the statutes is amended to read:

40.05 (1) (a) 5. Additional contributions may be made by any participant by deduction from earnings or otherwise or may be provided on behalf of any participant in any calendar year in which the participant has earnings, subject to any limitations imposed on contributions by the ~~internal revenue code~~ Internal Revenue Code, applicable regulations adopted under the ~~internal revenue code~~ Internal Revenue Code and rules of the department.

SECTION 18. 40.05 (1) (a) 6. of the statutes is amended to read:

40.05 (1) (a) 6. Under the rules promulgated under s. 40.03 (2) (r), additional contributions, ~~other than the first \$5,000 of contributions, or a beneficiary's prorated share thereof,~~ that are attributable to a death benefit paid under s. 40.73, may be made to the core annuity division by any participant by rollover contribution of a

payment or distribution from a pension or annuity qualified under section 401 of the Internal Revenue Code, subject to any limitations imposed on contributions by the Internal Revenue Code, applicable regulations adopted under the Internal Revenue Code, and rules of the department.

SECTION 19. 40.05 (2) (intro.) of the statutes is amended to read:

40.05 (2) EMPLOYER RETIREMENT CONTRIBUTIONS. (intro.) For Wisconsin retirement system purposes and subject to the federal annual compensation limits under ~~26 USC 401~~ (a) (17) for a participating employee who first becomes a participating employee on or after January 1, 1996:

SECTION 20. 40.05 (2r) (a) of the statutes is amended to read:

40.05 (2r) (a) Contributions made under this section are subject to the limitations under s. 40.32 and the ~~internal revenue code~~ Internal Revenue Code.

SECTION 21. 40.05 (2r) (b) (intro.) of the statutes is amended to read:

40.05 (2r) (b) (intro.) If a participant in the Wisconsin retirement system also participates in a different retirement plan offered by an employer that is subject to section 401 of the ~~internal revenue code~~ Internal Revenue Code and the internal revenue service seeks to disqualify one or more of the plans because the aggregate contributions to the plans exceed the contribution limits under section 415 of the ~~internal revenue code~~ Internal Revenue Code, the internal revenue service, if it permits state law to determine the order of disqualification of such retirement plans, shall disqualify the retirement plans in the following order:

SECTION 22. 40.05 (4r) of the statutes is amended to read:

40.05 (4r) PAYMENT OF CERTAIN INSURANCE PREMIUMS. If an annuitant is a an eligible retired public safety officer and receives health care coverage or long-term care coverage under a plan other than one offered under subch. IV, and if the

annuitant so elects by providing written notice to the department, the premium shall be paid as a deduction under s. 40.06 (1) (a) from the annuitant's annuity. If the annuitant receives an annuity that is not sufficient to cover premium payments, the annuitant shall make premium payments directly to the insurer. The department shall establish procedures to permit an annuitant who is a an eligible retired public safety officer to elect to have his or her premium paid as a deduction under s. 40.06 (1) (a) from his or her annuity. The annuitant shall provide the department with all necessary information to permit the department to make the payment in a timely manner.

SECTION 23. 40.08 (2) (b) of the statutes is amended to read:

40.08 (2) (b) If permitted under a deferred compensation plan established under subch. VII, insurance premiums for health or long-term care insurance coverage for a an eligible retired public safety officer may be deducted from an amount distributed under a deferred compensation plan and paid directly to an insurer.

SECTION 24. 40.08 (14) of the statutes is amended to read:

40.08 (14) ROLLOVERS TO OTHER RETIREMENT PLANS. If a participant who is entitled to receive a lump sum payment or a monthly annuity certain under s. 40.24 (1) (f) for which the participant has specified a term of less than 120 months or an annuity certain of less than 10 years in duration from the Wisconsin retirement system and who has an account established under any other retirement plan located in the United States so directs in writing, on a form prescribed by the department, the department shall pay the lump sum payment or the monthly annuity directly to the participant's account under that other retirement plan for credit under that other retirement plan. The department shall cease payment of the monthly annuity

payments to the annuitant's account under the other retirement plan within 30 days of the written request of the annuitant or written notice of the annuitant's death. This subsection shall be applied in compliance with section 401 (a) (31) of the Internal Revenue Code pursuant to any applicable federal regulations or guidance adopted under the Internal Revenue Code.

SECTION 25. 40.19 (5) of the statutes is created to read:

40.19 (5) For the purpose of complying with section 401 (a) (7) of the Internal Revenue Code, a participant shall be 100 percent vested in, and have a nonforfeitable right to, his or her retirement benefits upon attaining eligibility for the retirement benefits. A participant shall also be 100 percent vested in, and have a nonforfeitable right to, his or her accumulated employee contributions at all times. In the event of a termination of, or a complete discontinuance of employer contributions to the Wisconsin retirement system, a participant shall be 100 percent vested in, and have a nonforfeitable right to, his or her accrued retirement benefits. All such benefits are nonforfeitable to the extent funded. For the purpose of complying with section 401 (a) (8) of the Internal Revenue Code, any forfeitures of benefits by participants or former participants of the Wisconsin retirement system may not be used to pay benefit increases.

SECTION 26. 40.23 (4) (a) of the statutes is amended to read:

40.23 (4) (a) Subject to all requirements under the internal revenue code section 401 (a) (9) of the Internal Revenue Code and federal regulations applicable to that section, which relate to a governmental plan, as defined in section 414 (d) of the Internal Revenue Code, the department shall distribute to the participant the entire amount that is credited to the account of a participant under the Wisconsin retirement system no later than the required beginning date, unless the department

distributes this amount as an annuity or in more than one payment. If the department distributes this amount as an annuity or in more than one payment, the department shall begin the distribution no later than the required beginning date.

SECTION 27. 40.23 (4) (b) (intro.) of the statutes is amended to read:

40.23 (4) (b) (intro.) In the calendar year immediately preceding the calendar year of a participant's required beginning date, if the department distributes the amount that is credited to the account of a participant under the Wisconsin retirement system in a form other than as a lump sum payment, the department, subject to all requirements under the ~~internal revenue code~~ Internal Revenue Code, shall calculate the distribution to the participant according to one of the following:

SECTION 28. 40.23 (4) (e) of the statutes is amended to read:

40.23 (4) (e) 1. Subject to subds. 2. to 4. and section 401 (a) (9) of the Internal Revenue Code, if a participant dies before the distribution of benefits has commenced and the participant's beneficiary is the spouse or domestic partner, the department shall begin the distribution within 5 years after the date of the participant's death.

2. If Subject to section 401 (a) (9) of the Internal Revenue Code, if the spouse or domestic partner files a subsequent beneficiary designation with the department, the payment of the distribution may be deferred until the January 1 of the year in which the participant would have attained the age of 70.5 years.

3. If Subject to section 401 (a) (9) of the Internal Revenue Code, if the spouse or domestic partner does not apply for a distribution, the distribution shall begin as an automatic distribution as provided under subd. 1. or under par. (c), whichever distribution date is earlier.

4. If Subject to section 401 (a) (9) of the Internal Revenue Code, if the spouse or domestic partner dies, but has designated a new beneficiary, the birth date of the

spouse or domestic partner shall be used for the purposes of determining the required beginning date.

5. The department shall specify by rule all procedures relating to an automatic distribution to the spouse or domestic partner. These rules shall comply with the ~~internal revenue code~~ Internal Revenue Code.

SECTION 29. 40.23 (4) (f) (intro.) of the statutes is amended to read:

40.23 (4) (f) (intro.) If a participant dies before the distribution of benefits has commenced and the ~~participant's beneficiary is not the spouse or domestic partner~~ beneficiary cannot delay the automatic payment of benefits under section 401 (a) (9) of the Internal Revenue Code, the beneficiary shall do one of the following:

SECTION 30. 40.23 (4) (h) of the statutes is created to read:

40.23 (4) (h) Death and disability benefits provided under this chapter are limited by the incidental benefit rule under section 401 (a) (9) (G) of the Internal Revenue Code and applicable federal regulations and guidance adopted under the Internal Revenue Code.

SECTION 31. 40.23 (4) (i) of the statutes is created to read:

40.23 (4) (i) Distributions of benefits shall conform to a reasonable and good faith interpretation of section 401 (a) (9) of the Internal Revenue Code.

SECTION 32. 40.23 (4) (j) of the statutes is created to read:

40.23 (4) (j) Pursuant to a qualified domestic relations order, the department may establish separate benefits for a participant and an alternate payee.

SECTION 33. 40.30 (4) (b) of the statutes is amended to read:

40.30 (4) (b) Subject to the federal annual compensation limits under ~~26 USC~~ 401 (a) (17) for a participating employee who first becomes a participating employee ~~on or after January 1, 1996~~, the final average salary or final average earnings used

in the benefit formula computation for each retirement system under par. (a) shall be the individual's final average salary or final average earnings under the respective retirement system, determined in accordance with the provisions of that retirement system based on the earnings covered by that retirement system and on all service permitted under that retirement system to be used in determining the final average salary or final average earnings, increased by the percentage increase in the average of the total wages, as determined under [42 USC 415](#) (b) (3) (A), between the date on which the individual terminated all employment covered by that retirement system and the date on which the individual terminated all employment covered by any of those retirement systems.

SECTION 34. 40.31 (1) of the statutes is amended to read:

40.31 (1) GENERAL LIMITATION. The maximum retirement benefits payable to a participant in a calendar year, excluding benefits attributable to contributions subject to ~~any limitations under s. 40.23 (2) (a), (2m) (e) and (3)~~ the limit under s. 40.32, may not exceed the maximum benefit limitation established under section [415](#) (b) of the Internal Revenue Code, as adjusted under section [415](#) (d) of the Internal Revenue Code and any applicable regulations or guidance adopted under the Internal Revenue Code, except that the limit for an individual who first became a participant before January 1, 1990, may not be less than the accrued benefits of the participant, as determined without regard to any changes to the retirement system after October 14, 1987.

SECTION 35. 40.32 (1) of the statutes is amended to read:

40.32 (1) The sum of all employee post-tax contributions allocated to a participant's account ~~under each defined contribution plan sponsored by the employer, including all employer contributions and picked-up contributions~~

~~credited with interest at the effective rate under ss. 40.04 (4) (a) and (5) (b) and 40.05 (2) (g) and all employee contributions made under ss. 40.02 (17) and 40.05 (1), may not in any calendar year exceed the maximum contribution limitation established under section 415 (c) of the Internal Revenue Code, as adjusted under section 415 (d) of the Internal Revenue Code and any applicable regulations adopted by the federal department of the treasury.~~

SECTION 36. 40.72 (4r) of the statutes is amended to read:

40.72 (4r) At any time after an insured employee's amount of life insurance is reduced under subs. (2) and (3) and life insurance premiums are no longer required under s. 40.05 (6) (b), the employee may convert the present value of the life insurance to pay the premiums for health or long-term care insurance provided under subch. IV, but only if the department determines that the value of the conversion is exempt from taxation under the ~~internal revenue code~~ Internal Revenue Code.

SECTION 37. 40.80 (2) (g) of the statutes is amended to read:

40.80 (2) (g) Serve as trustee of any deferred compensation plan established under this section, hold the assets and income of the plan in trust for the exclusive benefit of the employees who participate in the plan and their beneficiaries, and maintain the plan as an eligible deferred compensation plan, as defined in ~~26 USC section 457 (b) of the Internal Revenue Code~~, and as a governmental plan for eligible employers, as defined in ~~26 USC section 457 (e) (1) (A) of the Internal Revenue Code~~.

SECTION 38. 40.80 (2t) of the statutes is amended to read:

40.80 (2t) The deferred compensation board may require a deferred compensation plan under this subchapter, upon election by a participant who is a an eligible retired public safety officer, to allow for the deduction of insurance premiums

for health or long-term care insurance coverage from an amount distributed from a participant's account and for the payment of the premiums directly to an insurer.

SECTION 39. 40.81 (2) of the statutes is amended to read:

40.81 (2) Any local government employer, or 2 or more employers acting jointly, may also elect under procedures established by the employer or employers to contract directly with a deferred compensation plan provider to administer a deferred compensation plan or to manage any compensation deferred under the plan and may also provide a plan under section 403 (b) of the ~~internal revenue code~~ Internal Revenue Code under procedures established by the local government employer or employers.

SECTION 40. 40.86 (intro.) of the statutes is amended to read:

40.86 Covered expenses. (intro.) An employee-funded reimbursement account plan may provide reimbursement to an employee for only the following expenses that are actually incurred and paid by an employee and that the board determines are consistent with the applicable requirements of the ~~internal revenue code~~ Internal Revenue Code:

(END)