



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3211/6
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2007 ASSEMBLY BILL 893

February 26, 2008 – Introduced by Representative JESKEWITZ, cosponsored by Senator WIRCH. Referred to Joint Survey Committee on Retirement Systems.

1 **AN ACT** *to renumber and amend* 40.02 (8) (b) and 40.80 (2r) (b); *to amend* 40.02
2 (8) (a) 2., 40.02 (22) (e), 40.02 (39m), 40.03 (6) (i), 40.05 (2) (b), 40.05 (2) (bu),
3 40.05 (2) (bv), 40.05 (2) (bw), 40.05 (2) (bz), 40.08 (1), 40.08 (3), 40.08 (4), 40.24
4 (1) (e), 40.25 (5) (b), 40.65 (3), 40.70 (1) (b), 40.70 (6), 40.73 (3) (e) and 40.74 (2);
5 **to repeal and recreate** 40.08 (6) (e); and **to create** 40.02 (8) (b) 2., 40.08 (1r),
6 40.74 (6) and 40.74 (7) of the statutes; **relating to:** distribution of moneys to
7 Wisconsin Retirement System employers under 1999 Wisconsin Act 11;
8 payment of interest by the Department of Employee Trust Funds on credited
9 or refunded moneys; Wisconsin Retirement System beneficiary standard
10 sequence; accelerated death benefit option continuation under the Wisconsin
11 Retirement System; life insurance benefits administered by the Department of
12 Employee Trust Funds; definition of the term Internal Revenue Code for
13 purposes of benefit plans administered by the Department of Employee Trust
14 Funds; interest rates charged on moneys owed the Department of Employee

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1 Trust Funds for benefit programs; payment of death benefits under the
2 Wisconsin Retirement System; authority of the Group Insurance Board;
3 eligibility requirements for duty disability benefit under the Wisconsin
4 Retirement System; amortization period for unfunded prior service liability
5 under the Wisconsin Retirement System; attachment of retirement benefits for
6 delinquent state tax purposes; waiver of benefits under the Wisconsin
7 Retirement System; and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes all of the following changes with respect to the operation and administration of the Wisconsin retirement System (WRS):

1. 1999 Wisconsin Act 11 requires the Employee Trust Funds Board to distribute \$200,000,000 to covered employers in the form of credit balances that could be used to offset employer contributions owed to the WRS. This bill requires that the board complete the distribution before January 1, 2009.

2. Current law prohibits the Department of Employee Trust Funds (DETF) from paying interest on moneys paid in error. The bill allows DETF to pay the interest in accordance with its rules and at a rate of interest established by rule.

3. Under current law, when a person does not provide a written beneficiary designation for death benefits under the WRS, or none of the designated beneficiaries survive, there is a sequence of relatives who become beneficiaries by default. This bill eliminates a former son-in-law or daughter-in-law as a default beneficiary. In addition, the bill adds great-grandchildren and other descendants of the deceased employee and nieces, nephews, and other descendants of the deceased employee's brothers and sisters to the list of default beneficiaries.

4. Current law allows a WRS annuitant to select an annuity option that pays the annuitant a temporary additional annuity until the end of the month in which the annuitant attains age 62 or dies, whichever occurs first. When the annuitant reaches age 62, the subsequent annuity payments are reduced to fund the cost of the temporary additional annuity that he or she received before attaining age 62. This bill eliminates the requirement that the temporary additional annuity must end at the annuitant's death if the annuitant dies before attaining age 62, instead permitting a named survivor or beneficiary to continue receiving the temporary additional annuity until the month after the month in which the annuitant would have attained age 62.

5. Under current law, to be insured under the group life insurance plan administered by DETF, an eligible employee must file an application with DETF. This bill requires that the application be filed in the manner provided by rule or contract. In addition, the bill also eliminates a requirement that an eligible employee

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who did not apply for life insurance when initially eligible cannot apply for that life insurance once he or she reaches the age of 55.

6. Currently, under the WRS, retirement benefits that are payable as the result of the death of a WRS participant are not considered to be abandoned until at least ten years have elapsed. The bill specifies when the potential beneficiary of a deceased person, who was insured under the group life insurance program, is treated as having abandoned any claim to the life insurance benefits.

7. For the purpose of benefit plans administered by DETF, the bill provides that the definition of the federal "Internal Revenue Code" is delegated to the federal government and not, as is current law, to enactments of the Wisconsin legislature.

8. Current law provides that for certain moneys owed under public employee benefit plans, DETF may retain the moneys from payments due any person or estate and may charge interest at the effective rate, which is essentially the most recent annual investment return on moneys in the fixed annuity division of the employee trust fund. This bill changes the rate at which interest can be charged to the assumed rate, which is the projected actuarial rate that is needed to fund the benefits under the WRS, unless DETF sets another rate by rule.

9. This bill specifies that the number of guaranteed death benefit payments that are payable to a beneficiary of a participant in the WRS may not exceed the life expectancy of the beneficiary.

10. Under current law, the Group Insurance Board is authorized to hear appeals of determinations made by DETF affecting group insurance plans. This bill requires the Group Insurance Board to hear such appeals.

11. The bill eliminates a requirement that a participant must submit a certified copy of his or her most recent state or federal income tax return to the Wisconsin Retirement Board for income verification purposes under the Duty Disability program. Instead, the bill provides that the Wisconsin Retirement Board may require a participant to authorize the Wisconsin Retirement Board to obtain a copy of the participant's tax returns.

12. Currently, unfunded prior service liabilities under the WRS are funded over a 40-year amortization period. This bill reduces the amortization period to 30 years for all unfunded prior service liabilities incurred after the bill's effective date.

13. Currently, the Department of Revenue (DOR) may attach WRS benefits for delinquent tax purposes. The bill clarifies that DOR may attach WRS annuity payments, lump sum payments, and disability annuity payments.

14. Current law permits a participant, beneficiary, or distributee of an estate to waive WRS benefits and provides that the waiver is effective on the first day of the 2nd month commencing after the waiver is received by DETF or on the date specified in the waiver, if later. This bill provides that the waiver is effective 30 days after it is received by DETF or on the date specified in the waiver, if earlier. The bill also provides that the waiver may be cancelled by the participant, beneficiary, or distributee in writing before the effective date.

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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:

1 **SECTION 1.** 40.02 (8) (a) 2. of the statutes is amended to read:

2 40.02 (8) (a) 2. In the absence of a written designation of beneficiary, or if all
3 designated beneficiaries ~~so designated~~ who survive the decedent die before filing
4 with the department a beneficiary designation applicable to that death benefit or an
5 application for any death benefit payable, the person determined in the following
6 sequence: group 1, ~~widow or widower~~ surviving spouse; group 2, children if at least
7 ~~one child survives~~ of the deceased participant, employee or annuitant, in ~~which event~~
8 equal shares, with the share of any deceased child shall be payable to the surviving
9 spouse issue of the child ~~or to the surviving children of the child if there is no spouse,~~
10 ~~or otherwise~~ or, if there is no surviving issue of a deceased child, to the other eligible
11 children in this group or, if deceased, their issue; group 3, ~~grandchild;~~ group 4,
12 parent, in equal shares if both survive; group 5 ~~4,~~ brother and sister in equal shares
13 and the issue of any deceased brother or sister. The shares payable to the issue of
14 a person shall be determined per stirpes. No payment may be made to a person
15 included in any group if there is a living person in any preceding group, and s. 854.04
16 (6) shall not apply to a determination under this subsection.

17 **SECTION 2.** 40.02 (8) (b) of the statutes is renumbered 40.02 (8) (b) (intro.) and
18 amended to read:

19 40.02 (8) (b) (intro.) "Beneficiary" does not include ~~a~~ any of the following:

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1 1. A person who dies before filing with the department either a beneficiary
2 designation applicable to that death benefit or an application for any death benefit
3 payable to the person except as otherwise provided under group 2, under par. (a) 2.
4 If a person dies after filing a beneficiary application but before the date on which the
5 benefit check, share draft or other draft is issued or funds are otherwise transferred,
6 any benefit payable shall be paid in accord with the written designation of
7 beneficiary, if any, filed with the department in connection with the application or,
8 if none, in accord with the last designation previously filed by the person, or
9 otherwise to the person's estate.

10 **SECTION 3.** 40.02 (8) (b) 2. of the statutes is created to read:

11 40.02 (8) (b) 2. For purposes of a group life insurance benefit plan under this
12 chapter, and at the discretion of the department, an individual who is notified by the
13 department or insurer that a benefit is payable to the individual because of the death
14 of an insured person, who is provided with any necessary application form, and who
15 does not then apply for the benefit within 12 months of the date of notification by the
16 department that the benefit is payable to the individual.

17 **SECTION 4.** 40.02 (22) (e) of the statutes is amended to read:

18 40.02 (22) (e) ~~Except~~ For an employee serving in a position covered under and
19 meeting the requirements of 38 USC 4301, et. seq., except for OASDHI purposes,
20 ~~means compensation deemed to have been paid for services deemed to have been~~
21 ~~rendered while serving in a position covered under, and meeting the requirements~~
22 ~~of, 38 USC 4301, et seq., at the employee's rate of pay prior to beginning such service~~
23 determined as required under 38 USC 4318 (b) (3) and regulations adopted
24 thereunder, provided contributions and premiums on the ~~deemed earnings~~
25 compensation are paid as required under s. 40.05.

ASSEMBLY BILL 893**SECTION 5**

1 **SECTION 5.** 40.02 (39m) of the statutes is amended to read:

2 40.02 (**39m**) “Internal revenue code” means the federal internal revenue code
3 under Title 26, USC, as ~~defined for the current taxable year under s. 71.01 (6)~~
4 amended, and applicable federal regulations adopted ~~under the internal revenue~~
5 code by the federal department of the treasury, including temporary regulations.

6 **SECTION 6.** 40.03 (6) (i) of the statutes is amended to read:

7 40.03 (**6**) (i) ~~May~~ Shall accept timely appeals of determinations made by the
8 department affecting any right or benefit under any group insurance plan provided
9 for under this chapter.

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

11 40.05 (**2**) (b) Contributions shall be made by each participating employer for
12 unfunded prior service liability in a percentage of the earnings of each participating
13 employee. A separate percentage rate shall be determined for the employee
14 occupational categories under s. 40.23 (2m) as of the employer’s effective date of
15 participation. The rates shall be sufficient to amortize as a level percent of payroll
16 over a period of ~~40~~ 30 years from the later of that date or January 1, 1986, the
17 unfunded prior service liability for the categories of employees of each employer
18 determined under s. 40.05 (2) (b), 1981 stats., increased to reflect any creditable prior
19 service granted on or after January 1, 1986, increased to reflect the effect of 1983
20 Wisconsin Act 141, increased at the end of each calendar year after January 1, 1986,
21 by interest at the assumed rate on the unpaid balance at the end of the year and
22 adjusted under pars. (bu), (bv) and (bw).

23 **SECTION 8.** 40.05 (2) (bu) of the statutes is amended to read:

24 40.05 (**2**) (bu) The employer contribution rate determined under par. (b) for
25 each employer shall be adjusted, if necessary, to reflect the added prior service

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1 liability of paying additional joint and survivor death benefits to beneficiaries of
2 participating employees as a result of 1997 Wisconsin Act 58 and that rate shall be
3 sufficient to amortize the unfunded prior service liability of the employers over the
4 remainder of the 40-year amortization period under ~~par. (b)~~ s. 40.05 (2) (b), 2005
5 stats.

6 **SECTION 9.** 40.05 (2) (bv) of the statutes is amended to read:

7 40.05 (2) (bv) The employer contribution rate determined under par. (b) for
8 participating employees who served in the U.S. maritime service shall be adjusted
9 to reflect the cost of granting creditable service under s. 40.02 (15) (a) 7. and that rate
10 shall be sufficient to amortize the unfunded prior service liability of the employers
11 over the remainder of the 40-year amortization period under ~~par. (b)~~ s. 40.05 (2) (b),
12 2005 stats.

13 **SECTION 10.** 40.05 (2) (bw) of the statutes is amended to read:

14 40.05 (2) (bw) The employer contribution rate determined under par. (b) for the
15 University of Wisconsin System shall be adjusted to reflect the cost of granting
16 creditable service under s. 40.285 (2) (e) and that rate shall be sufficient to amortize
17 the unfunded prior service liability of the employers over the remainder of the
18 40-year amortization period under ~~par. (b)~~ s. 40.05 (2) (b), 2005 stats.

19 **SECTION 11.** 40.05 (2) (bz) of the statutes is amended to read:

20 40.05 (2) (bz) The employer contribution rate determined under par. (b) for the
21 department of administration shall be adjusted to reflect the cost of granting
22 creditable service under s. 40.02 (17) (gm) and that rate shall be sufficient to amortize
23 the unfunded prior service liability of the department of administration over the
24 remainder of the 40-year amortization period under ~~par. (b)~~ s. 40.05 (2) (b), 2005
25 stats.

ASSEMBLY BILL 893**SECTION 12**

1 **SECTION 12.** 40.08 (1) of the statutes is amended to read:

2 40.08 (1) EXEMPTIONS. The benefits payable to, or other rights and interests of,
3 any member, beneficiary or distributee of any estate under any of the benefit plans
4 administered by the department, including insurance payments, shall be exempt
5 from any tax levied by the state or any subdivision of the state and shall not be
6 assignable, either in law or equity, or be subject to execution, levy, attachment,
7 garnishment or other legal process except as specifically provided in this section;
8 ~~except that, notwithstanding s. 40.01 (2), the department of revenue may attach~~
9 ~~benefit payments to satisfy delinquent tax obligations. The board and any member~~
10 ~~or agent thereof and the department and any employee or agent thereof are immune~~
11 ~~from civil liability for any act or omission while performing official duties relating to~~
12 ~~withholding any annuity payment under this subsection. The exemption from~~
13 taxation under this section shall not apply with respect to any tax on income.

14 **SECTION 13.** 40.08 (1r) of the statutes is created to read:

15 40.08 (1r) DELINQUENT STATE TAX OBLIGATIONS. Notwithstanding sub. (1) and s.
16 40.01 (2), the department of revenue may attach any lump sum payment or monthly
17 annuity paid under s. 40.23, 40.24, 40.25 (1) or (2), or 40.63 to satisfy delinquent tax
18 obligations. The board and any member or agent thereof and the department and
19 any employee or agent thereof are immune from civil liability for any act or omission
20 while performing official duties relating to withholding any payment under this
21 subsection.

22 **SECTION 14.** 40.08 (3) of the statutes is amended to read:

23 40.08 (3) WAIVERS. Any participant, beneficiary, or distributee of any estate
24 may waive, absolutely and without right of reconsideration or recovery, the right to
25 or the payment of all or any portion of any benefit payable or to become payable under

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1 this chapter. The waiver shall be effective ~~on the first day of the 2nd month~~
2 ~~commencing 30 days~~ after it is received by the department or on the date specified
3 in the waiver, if later earlier. The waiver may be cancelled by the participant,
4 beneficiary, or distributee in writing before the effective date.

5 **SECTION 15.** 40.08 (4) of the statutes is amended to read:

6 40.08 (4) RETENTION OF PAYMENTS. Unless voluntarily repaid and except as
7 limited by sub. (10), the department may retain out of any annuity or benefit an
8 amount as the department in its discretion may determine, for the purpose of
9 reimbursing the appropriate benefit plan accounts for a balance due under s. 40.25
10 (5) or for any money paid, plus interest at the ~~effective rate of the core annuity~~
11 ~~division~~ assumed rate, unless the department sets a different rate by rule, to any
12 person or estate, through misrepresentation, fraud, or error. Upon the request of the
13 department any employer shall withhold from any sum payable by the employer to
14 any person or estate and remit to the department any amount, plus interest at the
15 ~~effective rate of the core annuity division~~ assumed rate, unless the department sets
16 a different rate by rule, which the department paid to the person or estate through
17 misrepresentation, fraud, or error. Any amount, plus interest at the ~~effective rate~~
18 ~~assumed rate, unless the department sets a different rate by rule~~, not recovered by
19 the department from the employer may be procured by the department by action
20 brought against the person or estate.

21 **SECTION 16.** 40.08 (6) (e) of the statutes is repealed and recreated to read:

22 40.08 (6) (e) In accordance with rules promulgated by the department, and at
23 the rate of interest established by rule, the department may credit interest on
24 moneys refunded or credited under this subsection.

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

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1 40.24 (1) (e) A reduced annuity payable in the normal form or any of the
2 optional life forms provided under this section, plus a temporary annuity payable
3 monthly but terminating with the payment payable in the month following the
4 month in which the annuitant attains age 62 ~~or, if earlier, on the death of the~~
5 ~~annuitant. If the annuitant dies before the end of the final payment, the remaining~~
6 ~~payments of the temporary annuity certain shall be made to the named survivor or,~~
7 ~~if there is no living named survivor, in accordance with s. 40.73 (2) to the annuitant's~~
8 ~~beneficiary.~~ It is the intent of this option that so far as is practicable the amounts
9 of the life annuity and temporary annuity shall be determined so that the annuitant's
10 total anticipated benefits from the fund and from his or her primary OASDHI benefit
11 will be the same each month both before and after attainment of age 62.

12 **SECTION 18.** 40.25 (5) (b) of the statutes is amended to read:

13 40.25 (5) (b) The full amount of the benefit paid, plus interest at the ~~effective~~
14 ~~rate assumed rate, unless the department sets a different rate by rule,~~ shall be repaid
15 to the Wisconsin retirement system by the employer of an employee whose rights and
16 creditable service are reestablished under par. (a) within 60 days after the effective
17 date of the employee's reinstatement. The amount repaid by the employer under this
18 paragraph shall be deducted by the employer from any payment due the employee
19 as a result of the resolution of the appeal or, if that amount is insufficient, the balance
20 shall be deducted from the employee's earnings except the amount deducted from
21 each earnings payment shall be not less than 10% nor more than 25% of the earnings
22 payment. If the employee terminates employment the employer shall notify the
23 department of the amount not yet repaid, including any interest due, at the same
24 time it notifies the department of the termination of employment, and the
25 department shall repay to the employer the balance of the amount due from

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1 retentions made under s. 40.08 (4). The employer may charge interest at a rate not
2 in excess of the current year's assumed rate on any amount unpaid at the end of any
3 calendar year after the year of reinstatement.

4 **SECTION 19.** 40.65 (3) of the statutes is amended to read:

5 40.65 (3) The Wisconsin retirement board shall determine the amount of each
6 monthly benefit payable under this section and its effective date. The board shall
7 periodically review the dollar amount of each monthly benefit and adjust it to
8 conform with the provisions of this section. The board may request any income or
9 benefit information, or any information concerning a person's marital status, which
10 it considers to be necessary to implement this subsection and ~~shall~~ may require a
11 participant to ~~submit a certified~~ authorize the board to obtain a copy of his or her
12 most recent state or federal income tax return. The board may terminate the
13 monthly benefit of any person who refuses to submit information requested by the
14 board, who refuses to authorize the board to obtain a copy of his or her most recent
15 state or federal income tax return, or who submits false information to the board.

16 **SECTION 20.** 40.70 (1) (b) of the statutes is amended to read:

17 40.70 (1) (b) The employee files ~~with the department~~ an application in the
18 manner provided by rule or contract, to be effective on a date fixed by the department,
19 for one or more of the types of coverage established under this subchapter. The group
20 insurance board may provide a different method of enrollment than provided under
21 this subsection.

22 **SECTION 21.** 40.70 (6) of the statutes is amended to read:

23 40.70 (6) Except as provided in sub. (7m), any employee who has not applied
24 for coverage under sub. (1) within ~~6 months~~ the time period specified by rule or
25 contract after becoming eligible for coverage or any employee whose insurance

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1 terminates under sub. (8) shall not thereafter become insured for that coverage
2 unless ~~prior to the attainment of age 55~~ the employee furnishes evidence of
3 insurability satisfactory to the insurer, at his or her own expense. If the evidence is
4 approved, the employee shall become insured on the first day of the first month
5 beginning after the approval.

6 **SECTION 22.** 40.73 (3) (e) of the statutes is amended to read:

7 40.73 (3) (e) Any beneficiary who is eligible to receive a beneficiary annuity
8 may elect to receive the annuity in any of the optional annuity forms provided for
9 retirement annuities, other than as an annuity under s. 40.24 (1) (e) or any annuity
10 payable over the joint life expectancies of the beneficiary and another person. The
11 number of guaranteed monthly payments available to a beneficiary may not exceed
12 the life expectancy of the beneficiary.

13 **SECTION 23.** 40.74 (2) of the statutes is amended to read:

14 40.74 (2) A beneficiary of a deceased participant, annuitant, alternate payee,
15 beneficiary, or employee may waive absolutely and without right of reconsideration
16 or recovery all or part of any benefit payable under this chapter. The beneficiary
17 shall then be determined as if the waiving beneficiary had died prior to the decedent
18 except that if the person was a beneficiary under group 2 under s. 40.02 (8) (a) 2.,
19 payment shall be made as if at least one child had survived the participant, alternate
20 payee, beneficiary, employee, or annuitant. Unless the department receives the
21 beneficiary's written request to cancel the waiver before the date on which it would
22 otherwise become effective, the waiver shall be effective ~~on the first day of the 2nd~~
23 ~~month commencing 30 days~~ after it is received by the department or the date
24 specified in the waiver, if ~~later~~ earlier. The waiver may be cancelled by the
25 beneficiary in writing before the effective date. A waiver received after the effective

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1 date on which a beneficiary has commenced a monthly annuity under s. 40.73 (2) or
2 (3) shall apply to monthly payments payable after the effective date of the waiver.
3 Payment shall be subject to the restrictions specified in s. 40.73 (2) (b).

4 **SECTION 24.** 40.74 (6) of the statutes is created to read:

5 40.74 (6) Any potential primary beneficiary under s. 40.02 (8) who cannot be
6 located by reasonable efforts within 12 months after the later of the date of death of
7 the participant or the date on which the department determines the person, trust,
8 or estate initially became a potential primary beneficiary may be treated as a
9 beneficiary that predeceased the participant and all other potential beneficiaries.

10 **SECTION 25.** 40.74 (7) of the statutes is created to read:

11 40.74 (7) A trust that does not exist on the date of the participant's death or an
12 estate not opened or reopened within 12 months after the department determines the
13 estate initially became a potential primary beneficiary under s. 40.02 (8) may be
14 treated as a beneficiary that predeceased the participant and all other potential
15 beneficiaries.

16 **SECTION 26.** 40.80 (2r) (b) of the statutes is renumbered 40.08 (1r) and amended
17 to read:

18 40.08 (1r) Notwithstanding s. ~~40.08 sub.~~ (1), a participant's accumulated
19 assets held in an account in the deferred compensation plan established under ~~this~~
20 ~~subchapter subch. VII~~ may be divided, in the manner provided by the deferred
21 compensation board and under s. 40.80 (2r), pursuant to a domestic relations order,
22 as defined under s. 40.80 (2r) (a).

23 **SECTION 27. Nonstatutory provisions.**

24 (1) DISTRIBUTION OF MONEYS FROM RESERVE ESTABLISHED UNDER 1999 WISCONSIN
25 ACT 11. Notwithstanding the requirement under 1999 Wisconsin Act 11, section 27

ASSEMBLY BILL 893**SECTION 27**

1 (1) (b), that the employee trust funds board make deductions on a monthly basis from
2 employers' credit balances, the board shall distribute all remaining moneys in the
3 reserve established under 1999 Wisconsin Act 11, section 27 (1) (b), before January
4 1, 2009.

5 **SECTION 28. Initial applicability.**

6 (1) The treatment of section 40.05 (2) (b) of the statutes first applies to
7 unfunded prior service liabilities under the Wisconsin Retirement System that are
8 incurred on the effective date of this subsection.

9 (2) The treatment of section 40.24 (1) (e) of the statutes first applies to annuities
10 that became effective on the effective date of this subsection.

11 **SECTION 29. Effective dates.** This act takes effect on the day after publication,
12 except as follows:

13 (1) The treatment of section 40.24 (1) (e) of the statutes and SECTION 28 (2) of
14 this act take effect on the first day of the 3rd month after publication.

15 (END)