



2009 ASSEMBLY BILL 634

December 18, 2009 – Introduced by Representatives PARISI, BLACK, DANOU, TURNER, BERCEAU, MASON, MILROY and POPE-ROBERTS, cosponsored by Senators HANSEN, ERPENBACH, VINEHOUT and LEIBHAM. Referred to Committee on Labor. Referred to Joint Survey Committee on Retirement Systems.

1 **AN ACT** *to amend* 40.02 (48) (c), 40.06 (1) (dm), 111.70 (1) (a) and 111.70 (4) (n)
2 (title); and *to create* 40.02 (17) (n), 40.02 (17) (p), 40.02 (48) (bc), 40.02 (48) (bd),
3 40.65 (4w), 40.65 (4x), 111.70 (4) (np) and 111.91 (1) (ab) of the statutes;
4 **relating to:** collective bargaining and protective occupation participant status
5 under the Wisconsin Retirement System and a county retirement system for
6 county jail employees, county employees of a juvenile detention facility, and
7 state employees who are employed at state correctional institutions, juvenile
8 correctional facilities, the mental health institutes at Mendota and Winnebago,
9 the Wisconsin Resource Center, and secure mental health units or facilities for
10 sexually violent persons.

Analysis by the Legislative Reference Bureau

Under current law, participants under the Wisconsin Retirement System (WRS) whose principal duties involve law enforcement or fire suppression or prevention and require frequent exposure to a high degree of danger or peril and a high degree of physical conditioning are classified as protective occupation participants. Current law specifically classifies police officers, fire fighters, and

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various other individuals as protective occupation participants. Under the WRS, the normal retirement age of a protective occupation participant is lower than that of other participants and the percentage multiplier used to calculate retirement annuities is higher for protective occupation participants than for other participants.

This bill classifies county jail employees, county employees of a juvenile detention facility, and state employees who are employed at state correctional institutions, juvenile correctional facilities, the mental health institutes at Mendota and Winnebago, the Wisconsin Resource Center, or secure mental health units or facilities for sexually violent persons, as protective occupation participants, but only if collective bargaining agreements covering the employees require the employees to become protective occupation participants.

In addition, the bill makes protective occupation participant status under the WRS and a county retirement system, if such status is available, for these specific employees a mandatory subject of collective bargaining under the Municipal Employment Relations Act and the State Employees Labor Relations Act. A mandatory subject of collective bargaining is one primarily related to wages, hours, and conditions of employment over which the employer is required to bargain.

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

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

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

1 **SECTION 1.** 40.02 (17) (n) of the statutes is created to read:
2 40.02 (17) (n) Notwithstanding par. (d), each participant who is employed at
3 a state correctional institution, a juvenile correctional facility, as defined in s. 938.02
4 (10p), a mental health institute specified in s. 51.05 (1), the Wisconsin Resource
5 Center established under s. 46.056, or a secure mental health unit or facility
6 established under s. 980.065 (2) and who is classified as a protective occupation
7 participant pursuant to a collective bargaining agreement entered into under subch.
8 V of ch. 111 shall not be granted creditable service as a protective occupation
9 participant for any covered service while employed at a state correctional institution,
10 a juvenile correctional facility, as defined in s. 938.02 (10p), a mental health institute

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1 specified in s. 51.05 (1), the Wisconsin Resource Center established under s. 46.056,
2 or a secure mental health unit or facility established under s. 980.065 (2) that was
3 earned before the participant was classified as a protective occupation participant
4 for such covered service, unless that prior covered service was earned while the
5 participant was classified under sub. (48) (a) and s. 40.06 (1) (d) as a protective
6 occupation participant.

7 **SECTION 2.** 40.02 (17) (p) of the statutes is created to read:

8 40.02 (17) (p) Notwithstanding par. (d), each participant who is a county jail
9 employee or a county employee of a juvenile detention facility, as defined in s. 938.02
10 (10r), and who is classified as a protective occupation participant pursuant to a
11 collective bargaining agreement entered into under subch. IV of ch. 111 shall not be
12 granted creditable service as a protective occupation participant for any covered
13 service while a county jail employee or a county employee of a juvenile detention
14 facility that was earned before the participant was classified as a protective
15 occupation participant for such covered service, unless that prior covered service was
16 earned while the participant was classified under sub. (48) (a) and s. 40.06 (1) (d) as
17 a protective occupation participant.

18 **SECTION 3.** 40.02 (48) (bc) of the statutes is created to read:

19 40.02 (48) (bc) "Protective occupation participant" includes any participant
20 who is employed at a state correctional institution, a juvenile correctional facility, as
21 defined in s. 938.02 (10p), a mental health institute specified in s. 51.05 (1), the
22 Wisconsin Resource Center established under s. 46.056, or a secure mental health
23 unit or facility established under s. 980.065 (2) if the participant's employer classifies
24 the participant as a protective occupation participant pursuant to a collective
25 bargaining agreement entered into under subch. V of ch. 111 and the department

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1 receives notification of the participant's name as provided in s. 40.06 (1) (d) and (dm).
2 Notwithstanding par. (a), an employer shall classify such a participant as a
3 protective occupation participant without making a determination that the principal
4 duties of the participant involve active law enforcement or active fire suppression or
5 prevention.

6 **SECTION 4.** 40.02 (48) (bd) of the statutes is created to read:

7 40.02 (48) (bd) "Protective occupation participant" includes any participant
8 who is a county jail employee or a county employee of a juvenile detention facility,
9 as defined in s. 938.02 (10r), if the participant's employer classifies the participant
10 as a protective occupation participant pursuant to a collective bargaining agreement
11 entered into under subch. IV of ch. 111 and the department receives notification of
12 the participant's name as provided in s. 40.06 (1) (d) and (dm). Notwithstanding par.
13 (a), an employer shall classify such a participant as a protective occupation
14 participant without making a determination that the principal duties of the
15 participant involve active law enforcement or active fire suppression or prevention.

16 **SECTION 5.** 40.02 (48) (c) of the statutes is amended to read:

17 40.02 (48) (c) In s. 40.65, "protective occupation participant" means a
18 participating employee who is a police officer, fire fighter, an individual determined
19 by a participating employer under par. (a), ~~(bc)~~, ~~(bd)~~, or (bm) to be a protective
20 occupation participant, county undersheriff, deputy sheriff, state probation and
21 parole officer, county traffic police officer, conservation warden, state forest ranger,
22 field conservation employee of the department of natural resources who is subject to
23 call for forest fire control or warden duty, member of the state traffic patrol, state
24 motor vehicle inspector, University of Wisconsin System full-time police officer,
25 guard or any other employee whose principal duties are supervision and discipline

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1 of inmates at a state penal institution, excise tax investigator employed by the
2 department of revenue, person employed under s. 61.66 (1), or special criminal
3 investigation agent employed by the department of justice.

4 **SECTION 6.** 40.06 (1) (dm) of the statutes is amended to read:

5 40.06 (1) (dm) Each determination by a department head regarding the
6 classification of a state employee as a protective occupation participant shall be
7 reviewed by the office of state employment relations. ~~A~~ Unless otherwise provided
8 in a collective bargaining agreement under subch. V of ch. 111, a state employee's
9 name may not be certified to the fund as a protective occupation participant under
10 par. (d) until the office of state employment relations approves the determination.

11 **SECTION 7.** 40.65 (4w) of the statutes is created to read:

12 40.65 (4w) A participant employed at a state correctional institution, a juvenile
13 correctional facility, as defined in s. 938.02 (10p), a mental health institute specified
14 in s. 51.05 (1), the Wisconsin Resource Center established under s. 46.056, or a secure
15 mental health unit or facility established under s. 980.065 (2) who becomes a
16 protective occupation participant pursuant to a collective bargaining agreement
17 entered into under subch. V of ch. 111 is not entitled to a duty disability benefit under
18 this section for an injury or disease occurring before the participant became a
19 protective occupation participant.

20 **SECTION 8.** 40.65 (4x) of the statutes is created to read:

21 40.65 (4x) A participant who is a county jail employee or a county employee of
22 a juvenile detention facility, as defined in s. 938.02 (10r), and who becomes a
23 protective occupation participant pursuant to a collective bargaining agreement
24 entered into under subch. IV of ch. 111 is not entitled to a duty disability benefit

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1 under this section for an injury or disease occurring before the participant became
2 a protective occupation participant.

3 **SECTION 9.** 111.70 (1) (a) of the statutes, as affected by 2009 Wisconsin Acts 28
4 and 34, is amended to read:

5 111.70 (1) (a) “Collective bargaining” means the performance of the mutual
6 obligation of a municipal employer, through its officers and agents, and the
7 representative of its municipal employees in a collective bargaining unit, to meet and
8 confer at reasonable times, in good faith, with the intention of reaching an
9 agreement, or to resolve questions arising under such an agreement, with respect to
10 wages, hours and conditions of employment, and with respect to a requirement of the
11 municipal employer for a municipal employee to perform law enforcement and fire
12 fighting services under s. 61.66, and for a county with respect to any matter under
13 sub. (4) (np), and for a school district with respect to any matter under sub. (4) (n),
14 except as provided in subs. (3m), (3p), and (4) (m) and (mc) and s. 40.81 (3) and except
15 that a municipal employer shall not meet and confer with respect to any proposal to
16 diminish or abridge the rights guaranteed to municipal employees under ch. 164.
17 The duty to bargain, however, does not compel either party to agree to a proposal or
18 require the making of a concession. Collective bargaining includes the reduction of
19 any agreement reached to a written and signed document. The municipal employer
20 shall not be required to bargain on subjects reserved to management and direction
21 of the governmental unit except insofar as the manner of exercise of such functions
22 affects the wages, hours and conditions of employment of the municipal employees
23 in a collective bargaining unit. In creating this subchapter the legislature recognizes
24 that the municipal employer must exercise its powers and responsibilities to act for
25 the government and good order of the jurisdiction which it serves, its commercial

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1 benefit and the health, safety and welfare of the public to assure orderly operations
2 and functions within its jurisdiction, subject to those rights secured to municipal
3 employees by the constitutions of this state and of the United States and by this
4 subchapter.

5 **SECTION 10.** 111.70 (4) (n) (title) of the statutes, as created by 2009 Wisconsin
6 Act 34, is amended to read:

7 111.70 (4) (n) (title) *Mandatory subjects of bargaining; school districts.*

8 **SECTION 11.** 111.70 (4) (np) of the statutes is created to read:

9 111.70 (4) (np) *Mandatory subjects of bargaining; counties.* In a county, in
10 addition to any subject of bargaining on which the municipal employer is required
11 to bargain under sub. (1) (a), the municipal employer is required to bargain
12 collectively with respect to protective occupation participant status under s. 40.02 for
13 county jail employees and for county employees of a juvenile detention facility, as
14 defined in s. 938.02 (10r). If a county jail employee or a county juvenile detention
15 facility employee is covered by a county retirement system, the municipal employer
16 is required to bargain collectively with respect to protective occupation participant
17 status for the employee, if such status is available under that retirement system.

18 **SECTION 12.** 111.91 (1) (ab) of the statutes is created to read:

19 111.91 (1) (ab) In collective bargaining units including individuals employed
20 at a state correctional institution, a juvenile correctional facility, as defined in s.
21 938.02 (10p), a mental health institute specified in s. 51.05 (1), the Wisconsin
22 Resource Center established under s. 46.056, or a secure mental health unit or
23 facility established under s. 980.065 (2), the right of these individuals to be classified

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SECTION 12

1 as protective occupation participants under s. 40.02 is a mandatory subject of
2 bargaining.

3 (END)