



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0856/1
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2019 BILL

1 **AN ACT** *to renumber and amend* 40.05 (2) (ar); *to amend* 40.02 (48) (b) 3., 40.02
2 (48) (c) and 40.23 (3) (a); and *to create* 40.02 (17) (n), 40.02 (48) (am) 23., 40.02
3 (48) (b) 5., 40.05 (1) (a) 7., 40.05 (2) (ap), 40.05 (2) (ar) 2., 40.23 (3) (c), 40.65 (4w),
4 59.52 (8m) and 111.70 (4) (bn) of the statutes; **relating to:** classifying county
5 jailers as protective occupation participants under the Wisconsin Retirement
6 System and the treatment of county jailers under the Municipal Employment
7 Relations Act.

Analysis by the Legislative Reference Bureau

Under current law, participants under the Wisconsin Retirement System (WRS) whose principal duties involve active 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 classifies police officers, fire fighters, and 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.

This bill classifies county jailers as protective occupation participants without a requirement that their principal duties involve active law enforcement or active

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fire suppression or prevention. The bill defines county jailers as persons employed by a county whose principal duties involve supervising, controlling, or maintaining a jail or persons confined in a jail, regardless of whether the jailers have been sworn regarding their duties or whether they serve on a full-time basis.

Under the bill, county jailers who become protective occupation participants on or after the bill's effective date and are employed by a county that did not classify county jailers as protective occupation participants on July 1, 2018, are required to pay all additional employer costs resulting from their classification as protective occupation participants, including the cost of the duty disability program. County jailers who were classified as protective occupation participants before the bill's effective date and county jailers hired on or after the bill's effective date in counties that did classify county jailers as protective occupation participants on July 1, 2018, are not required to pay the additional employer costs. The bill also allows a county jailer to elect at the time of hire not to become a protective occupation participant.

Finally, under the Municipal Employment Relations Act, public safety employees may collectively bargain over wages, hours, and conditions of employment, and general employees may bargain collectively over only an annual percentage wage increase that does not exceed the annual percentage increase in the consumer price index. Under MERA, public safety employees and general employees may not be in the same collective bargaining unit. This bill amends MERA so that a county that treats a county jailer as a public safety employee on the effective date of this bill shall continue to treat any person it employs as a county jailer as a public safety employee except that, if the county subsequently raises a question regarding the appropriateness of including county jailers in a collective bargaining unit containing public safety employees, no person the county employs as a county jailer may be treated as a public safety employee.

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 a county jailer
3 and who is classified as a protective occupation participant shall be granted
4 creditable service as a protective occupation participant for all covered service as a
5 county jailer that was earned on or after the effective date of this paragraph [LRB

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1 inserts date], but may not be granted creditable service as a protective occupation
2 participant for any covered service as a county jailer that was earned before the
3 effective date of this paragraph [LRB inserts date], unless that service was earned
4 while the participant was classified under sub. (48) (a) and s. 40.06 (1) (d) as a
5 protective occupation participant.

6 **SECTION 2.** 40.02 (48) (am) 23. of the statutes is created to read:

7 40.02 (48) (am) 23. A county jailer.

8 **SECTION 3.** 40.02 (48) (b) 3. of the statutes is amended to read:

9 40.02 (48) (b) 3. A “deputy sheriff” or a “county traffic police officer” is any
10 officer or employee of a sheriff’s office or county traffic department, except one whose
11 principal duties are those of a telephone operator, clerk, stenographer, machinist or
12 mechanic and whose functions do not clearly fall within the scope of active law
13 enforcement even though such an employee is subject to occasional call, or is
14 occasionally called upon, to perform duties within the scope of active law
15 enforcement. Deputy sheriff or county traffic police officer includes also does not
16 include a county jailer, but does include any person regularly employed and
17 qualifying as a deputy sheriff or county traffic police officer, even if temporarily
18 assigned to other duties.

19 **SECTION 4.** 40.02 (48) (b) 5. of the statutes is created to read:

20 40.02 (48) (b) 5. A “county jailer” is an employee of a county whose principal
21 duties involve supervising, controlling, or maintaining a jail or the persons confined
22 in a jail, as assigned by the sheriff under s. 59.27 (1), regardless of whether the
23 employee has been sworn regarding his or her duties or whether the employee serves
24 on a full-time basis. Notwithstanding par. (a), an employer may classify an employee
25 who is a county jailer as a protective occupation participant under par. (am) 23.

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1 without making a determination that the principal duties of the employee involve
2 active law enforcement or active fire suppression or prevention. A determination
3 under this subdivision may not be appealed under s. 40.06 (1) (e) or (em). A county
4 jailer is not a protective occupation participant if he or she so elects with the employer
5 under s. 59.52 (8m) or 2019 Wisconsin Act (this act).

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

7 40.02 (48) (c) In s. 40.65, “protective occupation participant” means a
8 participating employee who is a police officer, fire fighter, an individual determined
9 by a participating employer under par. (a) or (bm) to be a protective occupation
10 participant, county undersheriff, deputy sheriff, county jailer, state probation and
11 parole officer, county traffic police officer, conservation warden, state forest ranger,
12 field conservation employee of the department of natural resources who is subject to
13 call for forest fire control or warden duty, member of the state traffic patrol, state
14 motor vehicle inspector, University of Wisconsin System full-time police officer,
15 guard or any other employee whose principal duties are supervision and discipline
16 of inmates at a state penal institution, excise tax investigator employed by the
17 department of revenue, person employed under s. 60.553 (1), 61.66 (1), or 62.13 (2e)
18 (a), or special criminal investigation agent employed by the department of justice.

19 **SECTION 6.** 40.05 (1) (a) 7. of the statutes is created to read:

20 40.05 (1) (a) 7. For a county jailer covered under subd. 3., the percentage of
21 earnings equal to the total actuarially required contribution rate, as approved by the
22 board under s. 40.03 (1) (e), for a participating employee whose formula rate is
23 determined under s. 40.23 (2m) (e) 3., less the contribution rate paid by the employer
24 for a county jailer under sub. (2) (a). This subdivision applies only to a county jailer
25 who becomes a protective occupation participant on or after the effective date of this

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1 subdivision [LRB inserts date], and is employed in a county that did not classify
2 county jailers as protective occupation participants on July 1, 2018.

3 **SECTION 7.** 40.05 (2) (ap) of the statutes is created to read:

4 40.05 (2) (ap) The contributions under par. (a) that are required to be paid by
5 a participating employer for a county jailer whose formula rate is determined under
6 s. 40.23 (2m) (e) 3. shall be a percentage of earnings equal to one-half of the total
7 actuarially required contribution rate, as approved by the board under s. 40.03 (1)
8 (e), for an employee whose formula rate is determined under s. 40.23 (2m) (e) 1. This
9 paragraph applies only to contributions paid for a county jailer who becomes a
10 protective occupation participant on or after the effective date of this paragraph
11 [LRB inserts date], and is employed in a county that did not classify county jailers
12 as protective occupation participants on July 1, 2018.

13 **SECTION 8.** 40.05 (2) (ar) of the statutes is renumbered 40.05 (2) (ar) 1. and
14 amended to read:

15 40.05 (2) (ar) 1. Participating Except as provided in subd. 2., participating
16 employers of employees subject to s. 40.65 shall contribute an additional percentage
17 or percentages of those employees' earnings based on the experience rates
18 determined to be appropriate by the board with the advice of the actuary.

19 **SECTION 9.** 40.05 (2) (ar) 2. of the statutes is created to read:

20 40.05 (2) (ar) 2. County jailers who become protective occupation participants
21 on or after the effective date of this subdivision [LRB inserts date], and are
22 employed in a county that did not classify county jailers as protective occupation
23 participants on July 1, 2018, shall make the contribution under subd. 1. in lieu of
24 their employers.

25 **SECTION 10.** 40.23 (3) (a) of the statutes is amended to read:

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1 40.23 (3) (a) Except as provided in ~~par.~~ pars. (b) and (c), the initial monthly
2 amount of any retirement annuity in the normal form shall not be less than the
3 money purchase annuity which can be provided by applying the sum of the
4 participant's accumulated additional and required contributions, including interest
5 credited to the accumulations, plus an amount from the employer accumulation
6 reserve equal to the participant's accumulated required contributions, less any
7 accumulated contributions to purchase other governmental service under s. 40.25
8 (7), 2001 stats., or s. 40.285 (2) (b) to fund the annuity in accordance with the
9 actuarial tables in effect on the annuity effective date.

10 **SECTION 11.** 40.23 (3) (c) of the statutes is created to read:

11 40.23 (3) (c) Under par. (a), for a county jailer described in s. 40.02 (48) (am)
12 23., the amount to be paid from the employer accumulation reserve is equal to the
13 employer required contributions, including interest, paid for a county jailer under
14 s. 40.05 (2) (a). This paragraph applies only to a county jailer who becomes a
15 protective occupation participant on or after the effective date of this paragraph
16 [LRB inserts date], and is employed in a county that did not classify county jailers
17 as protective occupation participants on July 1, 2018.

18 **SECTION 12.** 40.65 (4w) of the statutes is created to read:

19 40.65 (4w) A county jailer who becomes a protective occupation participant on
20 or after the effective date of this subsection [LRB inserts date], is not entitled to
21 a duty disability benefit under this section for an injury or disease occurring before
22 the effective date of this subsection [LRB inserts date].

23 **SECTION 13.** 59.52 (8m) of the statutes is created to read:

24 59.52 (8m) EMPLOYMENT OF COUNTY JAILERS. The board shall provide an
25 individual who is employed as a county jailer an option to elect not to be a protective

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1 occupation participant under s. 40.02 (48) (b) at the time the individual is hired as
2 a county jailer. An individual shall make an election under this subsection in writing
3 on a form provided by the board.

4 **SECTION 14.** 111.70 (4) (bn) of the statutes is created to read:

5 111.70 (4) (bn) *Public safety employee determination regarding county jailers.*

6 1. Except as provided under subd. 2., a county jailer, as defined in s. 40.02 (48) (b)
7 5., is a general municipal employee.

8 2. A county that treats a county jailer as a public safety employee on the
9 effective date of this subdivision [LRB inserts date], shall continue to treat any
10 person it employs as a county jailer as a public safety employee except that, if the
11 county raises a question concerning the appropriateness of including county jailers
12 in a collective bargaining unit that includes public safety employees, no person it
13 employs as a county jailer may be treated as a public safety employee.

14 **SECTION 15. Nonstatutory provision.**

15 (1) COUNTY JAILER OPT OUT FROM PROTECTIVE OCCUPATION PARTICIPANT STATUS
16 UNDER WISCONSIN RETIREMENT SYSTEM. No later than 60 days after the effective date
17 of this subsection, if an individual employed as a county jailer on the effective date
18 of this subsection does not want to be a protective occupation participant under the
19 Wisconsin Retirement System, the individual shall notify his or her employer in
20 writing on a form provided by the employer. An election not to be a protective
21 occupation participant is irrevocable.

22 **SECTION 16. Effective date.**

23 (1) This act takes effect on the January 1 after publication.

24 (END)