



2013 ASSEMBLY BILL 854

March 10, 2014 - Introduced by Representatives SCHRAA and STROEBEL, cosponsored by Senators GROTHMAN and CARPENTER. Referred to Committee on Labor.

1 **AN ACT** *to renumber and amend* 40.65 (3); *to amend* 40.65 (4) (intro.), 40.65
2 (4) (a) and 40.65 (4) (b); *to repeal and recreate* 40.65 (4) (c); and *to create*
3 40.65 (3) (b), 40.65 (3) (c), 40.65 (4d), 111.70 (4) (mc) 1. and 111.91 (2) (hm) of the
4 statutes; **relating to:** the duty disability benefit program under the Wisconsin
5 Retirement System, prohibited subjects of collective bargaining under the
6 Municipal Employment Relations Act and the State Employment Labor
7 Relations Act, and requiring the Legislative Audit Bureau to conduct a program
8 evaluation audit of certain disability and survivor benefit programs of public
9 employee retirement systems in this state.

Analysis by the Legislative Reference Bureau

Under the current duty disability program under the Wisconsin Retirement System (WRS), a protective occupation participant may receive a duty disability benefit, equal to 75 percent of his or her monthly salary, if all of the following occur: the employee is injured while performing his or her duty or contracts a disease due to his or her occupation; the disability is likely to be permanent; and the disability causes the employee to retire from his or her job, the employee's pay or position is reduced or he or she is assigned to light duty, or the employee's promotional opportunities are generally adversely affected because of the disability.

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This bill eliminates the conditions that relate to whether the employee's pay or position is reduced or he or she is assigned to light duty or the employee's promotional opportunities are generally adversely affected because of the disability and, instead, provides that, if an employer offers an employee who qualifies for a duty disability benefit another position and the employee does not accept the offer, the employee may not receive a duty disability benefit. If an employee accepts such an offer of employment, the amount of the employee's monthly benefit is reduced by all earnings payable to the employee from the employer.

The bill also requires that an employee receiving a duty disability must be reexamined by at least one licensed and practicing physician, designated or approved by the Wisconsin Retirement Board, every five years to determine whether the employee's disability is likely to be permanent. Under the bill, the duty disability benefit for an employee is terminated if the employee refuses to undergo the examination or if the examination reveals that the disability is no longer permanent.

In addition, the bill requires the Legislative Audit Bureau (LAB) to conduct a program evaluation audit of the duty disability and survivor benefits program under the WRS and any comparable program under a retirement system of a county having a population of 500,000 or more and a retirement system of a 1st class city. Under the bill, LAB must examine the history and purpose of the programs; the costs and benefits of the programs to state and local governments; any inequities, abuse, or other problems of the programs; and the similarities and differences between the programs and those of similar programs in other states. The bill also requires LAB to consider and propose changes to the design and implementation of the duty disability and survivor benefits programs.

Finally, the bill creates, as a prohibited subject of collective bargaining for municipal and state employees who are police officers, fire fighters, or emergency service providers (public safety employees), benefit features of, and eligibility conditions and methodology for obtaining and continuing to receive, any type of duty disability and survivor benefits as well as the impact of the features and such conditions and methodology on the wages, hours, and conditions of employment of the public safety employee.

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.** 40.65 (3) of the statutes is renumbered 40.65 (3) (a) and amended
2 to read:
3 40.65 **(3)** (a) The Wisconsin retirement board shall determine the amount of
4 each monthly benefit payable under this section and its effective date. The board

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1 shall periodically review the dollar amount of each monthly benefit and adjust it to
2 conform with the provisions of this section. The board may request any income or
3 benefit information, or any information concerning a person's marital status, which
4 it considers to be necessary to implement this ~~subsection~~ paragraph and may require
5 a participant to authorize the board to obtain a copy of his or her most recent state
6 or federal income tax return. The board may terminate the monthly benefit of any
7 person who refuses to submit information requested by the board, who refuses to
8 authorize the board to obtain a copy of his or her most recent state or federal income
9 tax return, or who submits false information to the board.

10 **SECTION 2.** 40.65 (3) (b) of the statutes is created to read:

11 40.65 (3) (b) The Wisconsin retirement board shall require that any person who
12 receives a monthly benefit under this section be examined by at least one licensed
13 and practicing physician, designated or approved by the board, every 5 years. A
14 written report of the examination in a form approved by the department, which shall
15 indicate whether the person is still disabled as specified in sub. (4) (b), shall be filed
16 with the department.

17 **SECTION 3.** 40.65 (3) (c) of the statutes is created to read:

18 40.65 (3) (c) The monthly benefit payable under this section shall be
19 terminated and no payment shall be payable after the first of the month in which a
20 determination is made by the department that any of the following occurs:

21 1. The written physician's report required in par. (b) indicates that the person
22 has recovered from the disability so the person is no longer disabled to the extent
23 required under sub. (4) (b).

24 2. The person refuses to submit to an examination under par. (b).

25 **SECTION 4.** 40.65 (4) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 854**SECTION 4**

1 40.65 (4) (intro.) ~~A~~ Subject to sub. (4d), a protective occupation participant is
2 entitled to a duty disability benefit as provided in this section if all of the following
3 occur:

4 **SECTION 5.** 40.65 (4) (a) of the statutes is amended to read:

5 40.65 (4) (a) The employee is injured while performing his or her duty or
6 contracts a disease due to his or her occupation;

7 **SECTION 6.** 40.65 (4) (b) of the statutes is amended to read:

8 40.65 (4) (b) The disability is likely to be permanent; ~~and~~.

9 **SECTION 7.** 40.65 (4) (c) of the statutes is repealed and recreated to read:

10 40.65 (4) (c) The disability causes the employee to retire from his or her job.

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

12 40.65 (4d) If an employer offers an employee who qualifies for a duty disability
13 benefit under sub. (4) another position and the employee does not accept the offer,
14 the employee may not receive a duty disability benefit. If an employee accepts such
15 an offer of employment, the amount of the employee's monthly benefit is reduced by
16 all earnings payable to the employee from the employer as provided under sub. (5)
17 (b) 5.

18 **SECTION 9.** 111.70 (4) (mc) 1. of the statutes is created to read:

19 111.70 (4) (mc) 1. The benefit features of, and the eligibility conditions and
20 methodology for obtaining and continuing to receive, any type of duty disability and
21 survivor benefits for the public safety employee and the impact of the benefit features
22 and such conditions and methodology on the wages, hours, and conditions of
23 employment of the public safety employee.

24 **SECTION 10.** 111.91 (2) (hm) of the statutes is created to read:

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1 111.91 (2) (hm) The benefit features of, and the eligibility conditions and
2 methodology for obtaining and continuing to receive, any type of duty disability and
3 survivor benefits for the public safety employee and the impact of the benefit features
4 and such conditions and methodology on the wages, hours, and conditions of
5 employment of the public safety employee.

SECTION 11. Nonstatutory provisions.

7 (1) AUDIT OF CERTAIN DISABILITY AND SURVIVOR BENEFIT PROGRAMS UNDER PUBLIC
8 EMPLOYEE RETIREMENT SYSTEMS IN WISCONSIN.

9 (a) The legislative audit bureau shall conduct a program evaluation audit of the
10 duty disability and survivor benefits program under section 40.65 of the statutes and
11 any comparable program under a retirement system of a county having a population
12 of 500,000 or more and a retirement system of a 1st class city. The legislative audit
13 bureau shall examine all of the following:

- 14 1. The history and purpose of the programs.
- 15 2. The costs and benefits of the programs to state and local governments.
- 16 3. Any inequities, abuse, or other problems of the programs.
- 17 4. Similarities and differences between the programs and those of similar
18 programs in other states.

19 (b) In performing the program evaluation audit, the legislative audit bureau
20 shall consider and propose changes to the design and implementation of the duty
21 disability and survivor benefits programs.

22 (c) The legislative audit bureau shall file its report in the manner described
23 under section 13.94 (1) (b) of the statutes before January 1, 2015.

SECTION 12. Initial applicability.

