2011 BILL

AN ACT to amend 40.02 (25) (b) 6m. a., 40.02 (49) and 40.05 (4) (b); and to create
36.24, 40.02 (25) (a) 7., 40.02 (25) (b) 12. and 40.22 (2) (n) of the statutes;
relating to: authorizing the Board of Regents of the University of Wisconsin
System to establish an optional retirement system for its employees.

Analysis by the Legislative Reference Bureau

This bill authorizes the Board of Regents of the University of Wisconsin (UW) System (board) to establish an optional retirement system for UW employees initially hired on or after January 1, 2012, who elect to participate in the optional retirement system. The optional retirement system must be established as a governmental plan and as a qualified plan for federal income tax purposes and must be so maintained and administered. The bill specifically provides that any employer contributions paid by the board during any year on behalf of a UW employee may not exceed the employer contributions paid by a participating employer under the Wisconsin Retirement System (WRS) in that year for a similarly situated employee.

Under the bill, the board must establish a process for employees to elect to participate in the optional retirement system and must determine all benefits for employees who elect to participate in the optional retirement system. The bill also provides that the board may delegate any powers and duties that the board considers necessary or desirable for the purpose of administering the optional retirement system.

The bill further provides that UW employees who elect to participate in the optional retirement system may not, at the same time, also be participating
employees in the WRS. Moreover, an employee who participates in the optional retirement system may not subsequently become a participating employee in the WRS during the period of his or her employment with the UW System. Finally, it should be noted, the bill does not affect any current law insurance benefit or coverage for employees in either the WRS or the optional retirement system.

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. 36.24 of the statutes is created to read:

36.24 Optional retirement system. (1) In this section:

(a) “Internal Revenue Code” means the Internal Revenue Code, as defined for the current taxable year under s. 71.01 (6), and applicable regulations adopted under the Internal Revenue Code, including temporary regulations.

(b) “Participating employee in the Wisconsin retirement system” means a participating employee, as defined in s. 40.02 (46).

(c) “Wisconsin retirement system” means the Wisconsin retirement system established under ch. 40.

(2) (a) The board may establish an optional retirement system for employees of the system initially hired on or after January 1, 2012, who elect to participate in the optional retirement system.

(b) The optional retirement system shall be established as a governmental plan and as a qualified plan for federal income tax purposes under section 401 (a) or 403 (a) or (b) of the Internal Revenue Code and shall be so maintained and administered.

(c) No benefit plan authorized under the optional retirement system may be administered in a manner that violates an Internal Revenue Code provision that
authorizes or regulates that benefit plan or that would cause an otherwise
tax-exempt benefit to become taxable under the Internal Revenue Code.

(d) Employer contributions paid by the board during any year on behalf of an
employee, calculated as a percentage of earnings, may not exceed the employer
contributions paid by a participating employer, as defined in s. 40.02 (47), under the
Wisconsin retirement system in that year for a similarly situated employee.

(3) The board shall establish a process for employees to elect to participate in
the optional retirement system and shall determine all benefits for faculty and
academic staff members who elect to participate in the optional retirement system.
The board may delegate any powers and duties that the board considers necessary
or desirable for the purpose of administering the optional retirement system.

(4) Employees who elect to participate in the optional retirement system may
not be participating employees in the Wisconsin retirement system. An employee
who participates in the optional retirement system may not subsequently become a
participating employee in the Wisconsin retirement system during the period of his
or her employment with the University of Wisconsin System.

(5) The board may offer long-term disability insurance for all employees who
elect to participate in the optional retirement system. Employees shall pay the full
premium cost of such insurance.

(6) For employees who elect to participate in the optional retirement system, any
required employee contributions shall be made by a reduction in salary and, for tax
purposes, shall be considered employer contributions under section 414 (h) (2) of the
Internal Revenue Code.

(7) Under the optional retirement system, the board shall enter into contracts
with one or more companies to provide retirement annuities to employees who elect
to participate in the optional retirement system. The contract shall provide for
retirement annuities that are fixed or variable or a combination thereof. In
determining the company with which the board shall enter into a contract, the board
shall consider all of the following:

(a) The portability of the contracts offered by the company, based on the number
of states in which the company provides contracts under similar retirement systems.

(b) The efficacy of the contracts in the recruitment and retention of employees
of the system.

(c) The nature and extent of the rights and benefits provided by the contracts
for employees and their beneficiaries.

(d) The relationship of the rights and benefits to the amount of contributions
made by or on behalf of the employee.

(e) The suitability of the rights and benefits to the needs and interests of
employees and the system and its institutions.

(f) The financial stability and ability of the company to provide the rights and
benefits under the contracts.

**SECTION 2.** 40.02 (25) (a) 7. of the statutes is created to read:

40.02 (25) (a) 7. Any employee who has been participating in the optional
retirement system under s. 36.24 for a period of at least 6 months prior to attainment
of age 70, not including any period of leave of absence without pay, or any employee
who immediately prior to participating in the optional retirement system had been
participating under the Wisconsin retirement system for a period of at least 6
months, but only with respect to group insurance other than long−term disability
insurance.

**SECTION 3.** 40.02 (25) (b) 6m. a. of the statutes is amended to read:
40.02 (25) (b) 6m. a. A retired employee of the state who is receiving a retirement annuity under this chapter or s. 36.24 or has received a lump sum payment under s. 40.25 (1).

**Section 4.** 40.02 (25) (b) 12. of the statutes is created to read:

40.02 (25) (b) 12. An employee who participates in the optional retirement system under s. 36.24, notwithstanding par. (a) 7.

**Section 5.** 40.02 (49) of the statutes is amended to read:

40.02 (49) "Retired employee" means a former insured employee who is not a participating employee and who is retired on an immediate or disability annuity under this chapter or s. 36.24 or who receives a lump sum payment under s. 40.25 (1) which would have been an immediate annuity if paid as an annuity or who is an eligible employee under sub. (25) (b) 6., 6e., or 6g.

**Section 6.** 40.05 (4) (b) of the statutes, as affected by 2011 Wisconsin Acts 10 and 32, is amended to read:

40.05 (4) (b) Except as provided under pars. (bc) and (bp), accumulated unused sick leave under ss. 13.121 (4), 36.30, 230.35 (2), 233.10, 238.04 (8), and 757.02 (5) and subch. V of ch. 111 of any eligible employee shall, at the time of death, upon qualifying for an immediate annuity under this chapter or s. 36.24 or for a lump sum payment under s. 40.25 (1) or upon termination of creditable service and qualifying as an eligible employee under s. 40.02 (25) (b) 6. or 10., be converted, at the employee's highest basic pay rate he or she received while employed by the state, to credits for payment of health insurance premiums on behalf of the employee or the employee's surviving insured dependents. Any supplemental compensation that is paid to a state employee who is classified under the state classified civil service as a teacher, teacher supervisor, or education director for the employee's completion of
educational courses that have been approved by the employee's employer is considered as part of the employee's basic pay for purposes of this paragraph. The full premium for any eligible employee who is insured at the time of retirement, or for the surviving insured dependents of an eligible employee who is deceased, shall be deducted from the credits until the credits are exhausted and paid from the account under s. 40.04 (10), and then deducted from annuity payments, if the annuity is sufficient. The department shall provide for the direct payment of premiums by the insured to the insurer if the premium to be withheld exceeds the annuity payment. Upon conversion of an employee's unused sick leave to credits under this paragraph or par. (bf), the employee or, if the employee is deceased, the employee's surviving insured dependents may initiate deductions from those credits or may elect to delay initiation of deductions from those credits, but only if the employee or surviving insured dependents are covered by a comparable health insurance plan or policy during the period beginning on the date of the conversion and ending on the date on which the employee or surviving insured dependents later elect to initiate deductions from those credits. If an employee or an employee's surviving insured dependents elect to delay initiation of deductions from those credits, an employee or the employee's surviving insured dependents may only later elect to initiate deductions from those credits during the annual enrollment period under par. (be). A health insurance plan or policy is considered comparable if it provides hospital and medical benefits that are substantially equivalent to the standard health insurance plan established under s. 40.52 (1).

SECTION 7. 40.22 (2) (n) of the statutes is created to read:
40.22 (2) (n) The employee participates in the optional retirement system under s. 36.24.