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Remarks to the Assembly Committee on Corrections

2017 Assembly Bill 676

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Assembly Bill 676 classifies county jailers as protective occupation participants under the Wisconsin Retirement System without a requirement that their principal duties involve active law enforcement.

The bill would essentially require county jailers who are employed by a county that did not classify county jailers as protective occupation participants on July 1, 2017 and become protective occupation participants under this bill to pay the employer share of the WRS contribution rate, as well as the duty disability rates, which is currently entirely an employer cost.

If the county jailer does not wish to pay the additional cost of being a protective, the bill allows them at the time of hire to be classified as a general. This choice is irrevocable.

The bill also provides that county employers who currently classify their jailers as protectives will continue to pay the employer cost for current and future employees.

We think the policy embodied in the bill is a departure from the policy that has been in place regarding protective category participants. We would like to spend a few minutes to make you aware of some of the policy implications for both the employees and employers.

Historically the state has recognized that protective occupation employees are exposed to a high degree of danger and have protected them by providing them an earlier retirement age, a higher retirement benefit, and duty disability insurance benefits. This policy is a recognition that these jobs are dangerous and critical to maintaining public safety and also that those who perform these jobs may not be able to perform them for as long. Under current law, the employer, who is in the best position to do so,

determines whether the particular positions qualify for protective status based upon the specific job duties. This bill changes that policy – it recognizes that jailers should be

classified as protective, but require the employee, and not society in general, to pay for these extra protections.

If the employee does not or cannot pay the additional costs, the employee may opt out of the protective category and be classified as a general employee, even though the job duties would be the same.

This creates inequity among employees who are presumably doing the same job, both across the state and in the same jail. For example, some jailers at the same employer may be classified as protectives and some may be classified as generals. This also creates inequities between the counties, allowing some counties to pay for the cost of being protective and other counties to require the employee to pay for the cost of being protective.

While determining whether this is the proper policy is clearly the legislature's prerogative, we are concerned that a policy that no longer requires the duties of the particular job to be the defining element of whether someone enjoys the protections of protective status has implications for the broader class of public safety professionals in general.

There are two main costs associated with the protective occupation category: WRS contribution rates and duty disability rates. Currently, the protective employee pays the same WRS contribution rate as general employees and the employer picks up the rest of the contribution rate. Employees classified as protectives under the bill, would be required to pay the employer share, as well as the duty disability rates, which is currently entirely an employer cost.

For example, if this bill were in effect for 2018, on average in a sampling of 10 counties, county jailers who do not opt out of the protective class under the bill would need to pay 12.86% of salary which includes 10.7% of salary for the WRS contribution and 2.57% of salary for duty disability coverage – instead of the WRS employee rate of 6.7%. However, the specific rate will vary from county to county due to differences in disability rates which are affected by claims experience. 2018 duty disability rates range from 0.23% of payroll to 6.07% of payroll.

To illustrate the effect of the bill, here are three different scenarios that would occur based on county specific information we collected in 2017.

Scenario 1 – County with high duty disability rates.

In Racine County, the annual starting wage was \$35,838 for county jailers, and the duty disability rate was 5.28%. A new hire in Racine County who elected to participate in the WRS as a protective employee would pay a total of \$5,691, or 15.88% of salary.

Scenario 2 – County with low duty disability rates.

For Ozaukee County, the annual starting wage was \$48,568, and the duty disability rate was 0.20%. A new hire in Ozaukee County who elected to participate in the WRS as a protective employee would pay \$5,245, or 10.80% of salary.

Scenario 3 – County classifying employees as protective as of 7/1/17.

The employee would pay the regular employee WRS rate of 6.8% of salary. That would be 9.08% less than the Racine County employee, and 4% less than the Ozaukee County employee.

On the more technical side, there may also be policy implications to the duty disability program. Allowing employees to select whether to be in a job classification and in a disability program or not may change experience in that the older, more likely to be disabled employees may select the program and others wouldn't, thereby increasing the costs to everyone in the long run. Generally, this is typically referred to as adverse selection. An actuarial analysis would be the best way to develop a more detailed impact analysis and fiscal estimate on premiums for the program.

Additionally, there are questions that would need to be worked out about the taxation of duty disability premiums. Federal tax law provides limited exceptions for employers and employees to pay insurance premiums like duty disability on a pre-tax basis. It is unclear if federal law would allow an employee to pay the employer's share and if it did, if it could be pre-tax.

Finally, many of the administrative aspects would be handled by the counties, such as determining what county jailer is or isn't a protective occupation employee for WRS purposes. ETF's fiscal estimate provides you information on the costs these administrative changes would have on ETF.

This bill is a significant change to a long-standing legislative policy regarding the compensation of protective employees. It does raise some equity issues and questions on the long-term impact on the duty disability program. ETF believes that an actuarial analysis would be the best way to determine what impact these changes would have on the programs.

If you have any questions about this testimony, please contact Tarna Hunter at 608-267-0908.