



State of Wisconsin  
2023 - 2024 LEGISLATURE

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**SENATE AMENDMENT 1,  
TO SENATE BILL 28**

March 10, 2023 - Offered by Senator MARKLEIN.

1           At the locations indicated, amend the bill as follows:

2           **1.** Page 3, line 24: delete the material beginning with that line and ending with  
3 page 4, line 9, and substitute:

4           “40.02 **(48)** (b) 5. A “county jailer” is an employee of a county whose principal  
5 duties involve supervising, controlling, or maintaining a jail or the persons confined  
6 in a jail, as assigned by the sheriff under s. 59.27 (1), regardless of whether the  
7 employee has been sworn regarding his or her duties or whether the employee serves  
8 on a full-time basis, provided the department receives notification of the  
9 participant’s name as provided in s. 40.06 (1) (d) and (dm). Notwithstanding par. (a),  
10 an employer may classify an employee who is a county jailer as a protective  
11 occupation participant under par. (am) 23. without making a determination that the  
12 principal duties of the employee involve active law enforcement or active fire  
13 suppression or prevention. A determination under this subdivision may not be

1 appealed under s. 40.06 (1) (e) or (em). A county jailer is not a protective occupation  
2 participant if he or she so elects with the employer under s. 59.52 (8m) or 2023  
3 Wisconsin Act .... (this act).”.

4 **2.** Page 4, line 11: delete lines 11 to 22 and substitute:

5 “40.02 (48) (c) In s. 40.65, “protective occupation participant” means a  
6 participating employee who is a police officer, fire fighter, an individual determined  
7 by a participating employer under par. (a) or (bm) to be a protective occupation  
8 participant, county undersheriff, deputy sheriff, county jailer who is categorized as  
9 a protective occupation participant, state probation and parole officer, county traffic  
10 police officer, conservation warden, state forest ranger, field conservation employee  
11 of the department of natural resources who is subject to call for forest fire control or  
12 warden duty, member of the state traffic patrol, state motor vehicle inspector,  
13 University of Wisconsin System full-time police officer, guard or any other employee  
14 whose principal duties are supervision and discipline of inmates at a state penal  
15 institution, excise tax investigator employed by the department of revenue, person  
16 employed under s. 60.553 (1), 61.66 (1), or 62.13 (2e) (a), or special criminal  
17 investigation agent employed by the department of justice.”.

18 **3.** Page 4, line 24: delete the material beginning with that line and ending with  
19 page 5, line 17, and substitute:

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). Contributions under this section for an employee

1 who first becomes a participating employee as a county jailer in a county that did not  
2 classify county jailers as protective occupation participants on the effective date of  
3 this subdivision .... [LRB inserts date], and is certified as a protective occupation  
4 participant on or after the effective date of this subdivision .... [LRB inserts date],  
5 shall be made by a reduction in salary and, for tax purposes, shall be treated as  
6 employer contributions under section 414 (h) (2) of the Internal Revenue Code. Such  
7 a participating employee may not elect to have contributions required by sub. (2) (a)  
8 paid directly to the employee or make a cash or deferred election with respect to the  
9 contributions. Employees who are participating employees on the effective date of  
10 this subdivision .... [LRB inserts date], and who are first certified as protective  
11 occupation participants in a county jailer position on or after the effective date of this  
12 subdivision .... [LRB inserts date], in a county that did not classify county jailers as  
13 protective occupation participants on the effective date of this subdivision .... [LRB  
14 inserts date], shall make the contribution under this section on a post-tax basis. For  
15 employees who are employed as county jailers in a county that classified county  
16 jailers as protective occupation participants on the effective date of this subdivision  
17 .... [LRB inserts date], the county may at a subsequent date determine to categorize  
18 county jailers as general participating employees. In such instance, a county jailer  
19 who is employed by the county on the date the county determines to categorize county  
20 jailers as general participating employees may make a one-time irrevocable election  
21 to not be a protective occupation participant. A county jailer in such a county who  
22 opts to remain a protective occupation participant shall make the contribution under  
23 this section on a post-tax basis. A county jailer who is first hired as a county jailer  
24 by such a county after the date the county determines to categorize county jailers as  
25 general participating employees may make a one-time irrevocable election to not

1 become a protective occupation participant. A county jailer who is first hired as a  
2 county jailer by such a county after the date the county determines to categorize  
3 county jailers as general participating employees and who opts to become a  
4 protective occupation participant shall make the contribution under this section on  
5 a pre-tax basis.”.

6 **4.** Page 6, line 10: delete lines 10 to 18 and substitute:

7 “40.05 (2) (ap) The contributions under par. (a) that are required to be paid by  
8 a participating employer for a county jailer whose formula rate is determined under  
9 s. 40.23 (2m) (e) 3. shall be a percentage of earnings equal to one-half of the total  
10 actuarially required contribution rate, as approved by the board under s. 40.03 (1)  
11 (e), for an employee whose formula rate is determined under s. 40.23 (2m) (e) 1. This  
12 paragraph applies only to contributions paid for a county jailer who becomes a  
13 protective occupation participant on or after the effective date of this paragraph ....  
14 [LRB inserts date], and is one of the following:

15 1. Employed in a county that did not classify county jailers as protective  
16 occupation participants on the effective date of this subdivision .... [LRB inserts  
17 date].

18 2. Employed in a county that classified county jailers as protective occupation  
19 participants on the effective date of this subdivision .... [LRB inserts date], and the  
20 county subsequently determines to not classify county jailers as protective  
21 occupation participants and instead classify county jailers as general participating  
22 employees.”.

23 **5.** Page 7, line 1: delete lines 1 to 10 and substitute:

1           “40.05 (2) (ar) 2. County jailers who are first hired as protective occupation  
2 participants on or after the effective date of this subdivision .... [LRB inserts date],  
3 in a county that did not classify county jailers as protective occupation participants  
4 on the effective date of this subdivision .... [LRB inserts date], may make the  
5 contribution under subd. 1. on a pre-tax basis, in lieu of their employers making the  
6 contribution. County jailers who are first certified as protective occupation  
7 participants on or after the effective date of this subdivision .... [LRB inserts date],  
8 in a county that did not classify county jailers as protective occupation participants  
9 on the effective date of this subdivision .... [LRB inserts date], shall make the  
10 contribution under subd. 1. on a post-tax basis, in lieu of their employers making the  
11 contribution. For employees who are employed as county jailers in a county that  
12 classified county jailers as protective occupation participants on the effective date of  
13 this subdivision .... [LRB inserts date], the county may at a subsequent date  
14 determine to categorize county jailers as general participating employees. In such  
15 instance, a county jailer who is employed by the county on the date the county  
16 determines to categorize county jailers as general participating employees may  
17 make a one-time irrevocable election to not be a protective occupation participant.  
18 A county jailer in such a county who opts to remain a protective occupation  
19 participant shall make the contribution under subd. 1. on a post-tax basis. A county  
20 jailer who is first hired as a county jailer by such a county after the date the county  
21 determines to categorize county jailers as general participating employees may  
22 make a one-time irrevocable election to not become a protective occupation  
23 participant. A county jailer who is first hired as a county jailer by such a county after  
24 the date the county determines to categorize county jailers as general participating

1 employees and who opts to become a protective occupation participant shall make  
2 the contribution under subd. 1. on a pre-tax basis.”

3 **6.** Page 7, line 22: delete the material beginning with that line and ending with  
4 page 8, line 3, and substitute:

5 “40.23 (3) (c) Under par. (a), for a county jailer described in s. 40.02 (48) (am)  
6 23., the amount to be paid from the employer accumulation reserve is equal to the  
7 employer required contributions, including interest, paid for a county jailer under  
8 s. 40.05 (2) (a). This paragraph applies only to a county jailer who becomes a  
9 protective occupation participant on or after the effective date of this paragraph ....  
10 [LRB inserts date], and is one of the following:

11 1. Employed in a county that did not classify county jailers as protective  
12 occupation participants on the effective date of this subdivision .... [LRB inserts  
13 date].

14 2. Employed in a county that classified county jailers as protective occupation  
15 participants on the effective date of this subdivision .... [LRB inserts date], and the  
16 county subsequently determines to not classify county jailers as protective  
17 occupation participants and instead classify county jailers as general participating  
18 employees.”.

19 **7.** Page 8, line 5: delete lines 5 to 14 and substitute:

20 “40.28 (1) (a) 2. The amount equal to 200 percent of employee required  
21 contribution accumulations reserved for a variable annuity as of the date the annuity  
22 begins. Except, for a county jailer described in s. 40.02 (48) (am) 23., the amount  
23 equal to the employee required contributions and the employer required  
24 contributions paid for a county jailer under s. 40.05 (2) (a), including interest,

1 reserved for a variable annuity on the date the annuity begins. The amount  
2 applicable for a county jailer applies only to a county jailer who becomes a protective  
3 occupation participant on or after the effective date of this subdivision .... [LRB  
4 inserts date], and who is either employed in a county that did not classify county  
5 jailers as protective occupation participants on the effective date of this subdivision  
6 .... [LRB inserts date], or employed in a county that classified county jailers as  
7 protective occupation participants on the effective date of this subdivision .... [LRB  
8 inserts date], and the county subsequently determines to not classify county jailers  
9 as protective occupation participants and instead classify county jailers as general  
10 participating employees; and”.

11 **8.** Page 8, line 20: delete the material beginning with that line and ending with  
12 page 9, line 5, and substitute:

13 **“SECTION 17g.** 40.73 (1) (am) 3. of the statutes is renumbered 40.73 (1) (am) 3.  
14 (intro.) and amended to read:

15 40.73 (1) (am) 3. (intro.) Twice the employee required contributions, after first  
16 subtracting the accumulations under subd. 2., including interest on the  
17 accumulations. Except, for a county jailer described in s. 40.02 (48) (am) 23., the  
18 amount equal to the employee required contributions and the employer required  
19 contributions paid for a county jailer under s. 40.05 (2) (a), after first subtracting the  
20 accumulations under subd. 2., including interest on the accumulations. The amount  
21 applicable for a county jailer applies only to a county jailer who becomes a protective  
22 occupation participant on or after the effective date of this subdivision .... [LRB  
23 inserts date], and who is one of the following:

24 **SECTION 17r.** 40.73 (1) (am) 3. a. and b. of the statutes are created to read:

1           40.73 (1) (am) 3. a. Employed in a county that did not classify county jailers as  
2 protective occupation participants on the effective date of this subd. 3. a. .... [LRB  
3 inserts date].

4           b. Employed in a county that classified county jailers as protective occupation  
5 participants on the effective date of this subd. 3. b. .... [LRB inserts date], and the  
6 county subsequently determines to not classify county jailers as protective  
7 occupation participants and instead classify county jailers as general participating  
8 employees.”.

9           **9.** Page 9, line 7: delete lines 7 to 11 and substitute:

10           “59.52 (8m) EMPLOYMENT OF COUNTY JAILERS. (a) The board of an employer that  
11 did not classify county jailers as protective occupation participants on the effective  
12 date of this paragraph .... [LRB inserts date], shall provide to an individual who is  
13 employed as a county jailer the irrevocable option to elect not to be a protective  
14 occupation participant under s. 40.02 (48) (b) 5. when hired after the effective date  
15 of this paragraph .... [LRB inserts date], as a county jailer for the employer. An  
16 individual shall make an election under this paragraph within 60 days of being  
17 hired, in writing and on a form provided by the board.

18           (b) The board of an employer that classified county jailers as protective  
19 occupation participants on the effective date of this paragraph .... [LRB inserts date],  
20 and that subsequent to that date determines to classify county jailers as general  
21 participating employees shall provide to an individual who is employed as a county  
22 jailer on the date the board of the employer determines to classify county jailers as  
23 general participating employees the irrevocable option to not be a protective  
24 occupation participant under s. 40.02 (48) (b) 5. Such a board shall provide notice



1 to county jailers of the board's determination and a jailer's opportunity to remain a  
2 protective occupation participant in writing, in a manner that the employer typically  
3 uses to provide notices to employees, and shall post such a notice where notices to  
4 employees are customarily posted. An individual shall make an election under this  
5 paragraph within 60 days after the determination by the board of the employer to  
6 classify county jailers as general participating employees, in writing and on a form  
7 provided by the board.

8 (c) The board of an employer that classified county jailers as protective  
9 occupation participants on the effective date of this paragraph .... [LRB inserts date],  
10 and that subsequent to that date determines to classify county jailers as general  
11 participating employees shall provide to an individual who is hired as a county jailer  
12 after the date the board of the employer determines to classify county jailers as  
13 general participating employees the irrevocable option to elect to not become a  
14 protective occupation participant under s. 40.02 (48) (b) 5. An individual shall make  
15 an election under this paragraph within 60 days after being hired, in writing and on  
16 a form provided by the board.”.

17 **10.** Page 10, line 1: after “subsection” insert “who is not a protective  
18 occupation participant on the effective date of this subsection”.

19 (END)