



STATE OF WISCONSIN
Department of Employee Trust Funds
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CORRESPONDENCE MEMORANDUM

DATE: January 31, 2005
TO: Members of the Deferred Compensation Board
FROM: Robert Weber, DETF Chief Counsel
SUBJECT: Proposed changes in Administrative Rule-making process

Staff requests that the Deferred Compensation Board formally agree to a rule-making process under which a rule will not formally come before the Board for action until the Department believed the final draft report was ready to submit to the Legislature. At that point, the Board's approval will be requested.

Wis. Stat. § 40.03 (2) (ir) provides that the Department Secretary:

Shall promulgate, with the approval of the deferred compensation board, all rules required for the administration of deferred compensation plans established under subch. VII.

Wis. Stat. § 40.80 (2m) provides:

The deferred compensation board shall promulgate rules establishing procedures, requirements and qualifications for offering deferred compensation plans to state employees in addition to the deferred compensation plans offered by deferred compensation providers selected and contracted with under sub. (2).

It generally takes a year or more to promulgate an administrative rule, assuming there are no major problems with the rule. The process includes a number of mandatory delays, such as those between publication of a scope statement and approval of the scope statement or between notice of a public hearing and holding the hearing. Other delays are inherent in the process. Publication in the Administrative Register is required at several steps in the process. The Administrative Register is published twice per month and the publication deadline is two weeks, or more, in advance. If approval by a Board is required, there are delays inherent in getting materials to Board members and providing proper notice of the meeting.

Reviewed and approved by Dave Stella, Deputy Secretary

Signature _____

Date _____

The Department wants to streamline administrative rule-making as much as possible, while still providing that the Board will have a final approval over a rule prior to its promulgation. Our goal is to standardize the process for all DETF rulemaking, so this process has been recommended to all the other Boards. The effort began in 1996 when additional steps were added to the rule-making process by the Legislature. At the suggestion of the Department, the ETF Board delegated some of its new responsibilities to the Department. In November and December 2004, the Employee Trust Funds, Teachers Retirement, Wisconsin Retirement and Group Insurance Boards all approved the process described in this memorandum.

Details of Proposal:

This process will apply to administrative rule-making involving rules required for the administration of the deferred compensation plans, including any deferred compensation program or plan under the Board's administration that may be created in the future.

The Department of Employee Trust Funds will be responsible for:

- Originating the rule proposal by drafting and publishing the required Scope Statement.
- Drafting the Proposed Rule and submitting it to the Legislative Council Staff for review.
- Publishing the required Notices of Submission and Notice of Public Hearing.
- Holding any necessary hearing.
- Drafting the final text of the proposed rule and the Final Draft Report on the rule.

The DETF Secretary will be responsible for approving the Scope Statement and Notices of Submission and Public Hearing.

The Deferred Compensation Board will be regularly informed of the status of the rule-making through each step of the procedure. Board members will be sent informational copies of the Scope Statement, Proposed Rule and Final Draft Report, including the intended final text of the rule. Any Board member may request more information from me or the rule's contact person, or ask that a discussion on the rule be added to the agenda for a Board meeting.

The Board will be asked to approve the rule after receiving the Final Draft Report. This will normally be the only time the rule appears as an action item on the Board agenda. The Final Draft Report must include not only the final text of the rule, but also an analysis and fiscal estimate for the rule, a list of the persons appearing at the public hearing, a summary of public comments plus an explanation of any modifications made in rule as a result of comments or testimony received at a public hearing.

Oral argument directly to the Board about a rule will not occur. However, in addition to the Final Draft Report, the record of the public hearing (normally a tape recording) is available for review, along with any copies of any written comments received.

During the Legislative review process that follows, the DETF Secretary will decide whether to make changes to the rule of a minor or editorial nature, or to withdraw the rule, altogether. If the Secretary determines that major changes of a substantive nature are necessary before the rule can successfully be promulgated, the redrafted version of the rule will again be brought before the Board for its approval.

Staff requests Board approval to implement this process immediately.

The following motion could be offered for that purpose:

Move that the Deferred Compensation Board adopt the rule-making process described in DETF Chief Counsel Weber's memorandum to the Board dated January 31, 2005.