

**State of Wisconsin  
Department of Employee Trust Funds,**

**PROPOSED RULE** to repeal s. ETF 10.12 (1) (d), renumber s. ETF 10.12 (1) (a), (b) and (c), renumber and amend s. ETF 10.12 (intro.), amend s. ETF 10.12 (4) (c) (intro.), repeal and recreate s. ETF 10.12 (2) and create s. ETF 10.12 (1r) (d), (4) (d), (5) and (6) regarding separate retirement system investments in the fixed and variable retirement investment trusts.

**Notice of Public Hearing**

A public hearing on this proposed rule will be held on Tuesday, January 24, 2006, at 3:00 PM in Conference Room GA at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin.

**Analysis Prepared by the Department of Employee Trust Funds**

**1. Statutes interpreted:**

Wis. Stat. §§ 40.015 and 40.03 (1) (n) and (2) (q)

**2. Statutory authority:**

Wis. Stat. § 40.03 (2) (q)

**3. Explanation of agency authority:**

The Secretary of the Department of Employee Trust Funds is required to promulgate rules governing the times when separate retirement systems, such as the Milwaukee Public Schools Retirement System, may send or deliver funds to be invested as if part of the fixed or variable retirement investment trust, the withdrawal of those funds, the amounts of money that may be sent, delivered or withdrawn, the valuation of money that has been sent, delivered or withdrawn, and the distribution of investment income among the retirement systems. The Secretary's rules may also modify the basis for accounting or valuation and the investment earnings distribution procedures of the Wisconsin retirement system to the extent necessary to achieve equity among the various retirement systems.

**4. Related statute or rule:**

Wis. Stat. § 40.03 (1) (n).

| Board | Mtg Date   | Item # |
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## 5. Plain language analysis:

The proposed rule revision would better mirror the investment performance of the fixed and variable retirement investment trusts for purposes of valuing the investment accounts of separate retirement systems. The proposed rule will also better assure full compliance with the requirement of Wis. STAT. § 40.03 (2) (n) that each separate retirement system will pay for the costs of investing and administering funds sent to the Department of Employee Trust Funds.

The main purpose of the proposed rule revision in s. ETF 10.12 is to change the formulas used to value investments of separate retirement system accounts to be consistent with recommended financial industry practice. The revisions will also fine tune transaction definitions to facilitate the most effective implementation of the new formulas. For example, the rules concerning deposits are revised to allow deposits only on the last day of the month rather than the first day.

Section ETF 10.12 currently prescribes an investment valuation formula that is not totally consistent with recommended practice or conducive to establishing levels of process quality assurance. For example, the current rule does not enable a rate of earnings comparison between the separate accounts with the rate of earnings of the trust fund as a whole. Since the existing rule was first implemented, departmental experience and guidance from financial experts of the State of Wisconsin Investment Board have identified ways to improve the valuation method and to add procedures that will help ensure complete and accurate valuations.

In order to avoid violation of the exclusive benefit rule of 26 U.S. Code §401(a) and Wis. STAT. § 40.015 (1) the proposed rule will also limit the separate retirement systems who may invest in the Public Employee Trust Fund to those retirement systems, as defined by Wis. STAT. § 40.02 (51), providing additional pension benefits for employees covered by the Wisconsin Retirement System.

## 6. Summary of, and comparison with, existing or proposed federal regulations:

In order to be qualified under 26 U.S. Code §401(a)(2), A trust forming part of an employer pension plan must be for the exclusive benefit of the employees or their beneficiaries. It is prohibited to use or divert any part of the trust corpus or income for any other purposes.

7. Comparison with rules in adjacent states:

Permitting discretionary investment of a separate trust fund in the public employee's retirement trust appears to be unique to Wisconsin, at least among neighboring states.

8. Summary of factual data and analytical methodologies:

The investment valuation calculation was developed in consultation with the State of Wisconsin Investment Board staff to more accurately mirror the investment performance of the Public Employee Trust Fund as a whole, to adopt industry best practices and to enable the investment and administrative costs for each separate retirement system's funds to be assessed.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

Wis. STAT. § 40.02 (51) defines "retirement system" in a manner that necessarily excludes all private businesses. So the proposed rule has no effect whatsoever on small businesses.

10. Anticipated costs incurred by private sector:

None.

11. Effect on small business:

No effect.

12. Agency contact person:

Please direct any questions about the proposed rule to Robert Weber, Chief Legal Counsel, telephone (608) 266-5804, e-mail address: rob.weber@etf.state.wi.us., or Bob Willett, Director, Office of Trust Finance and Data Analysis, telephone (608) 266-0904, e-mail bob.willett@etf.state.wi.us. The mailing address for both Mr. Weber and Mr. Willett is Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707.

13. Place where comments are to be submitted and deadline for submission:

Written comments on the proposed rule may be submitted to Robert Weber, Department of Employee Trust Funds, 801 W. Badger Road, P.O. Box 7931, Madison, WI 53707-7931. Written comments must be received at the Department of Employee Trust Funds no later than 4:30 PM on Wednesday, January 25, 2006.

**Initial Regulatory Flexibility Analysis:**

The proposed rule has no effect on small businesses.

**Fiscal Estimate:**

The proposed rule has no fiscal impact on the liabilities or revenues of any county, city, village, town, technical college district or sewerage district and the only school district affected is the Milwaukee Public Schools. That is because, at present, Milwaukee Public Schools is the only separate retirement system investing its assets as permitted under Wis. Stat. § 40.03 (1) (n).

The effect of the proposed rule on the revenues and liabilities of the funds invested by the Milwaukee Public School retirement system, compared to the prior method of valuation is unpredictable and varies under different circumstances. However, the proposed rule more accurately reflects the actual investment experience of the fixed and variable retirement investment trusts of the Public Employee Trust Fund in which the funds are invested.

**Free Copies of Proposed Rule:**

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707-7931, telephone (608) 266-1071.

**Text of Proposed Rule**

**SECTION 1.** ETF 10.12 (intro.) is renumbered ETF 10.12 (1g) and amended to read:

ETF 10.12 (1g) PROCEDURE. The governing body of ~~the~~ a separate retirement system qualifying under sub. (5) may request participation in the retirement trust fund by the adoption of a resolution accepting the provisions of this section in a form approved by the department. A certified copy of the resolution shall be forwarded to the department and participation shall be effective on the first day of the month following board approval of the resolution under s. 40.03 (1) (n), Stats. Funds may be delivered or sent to the department subject to ~~the following:~~ this section.

**SECTION 2.** ETF 10.12 (1) (a), (b) and (c) are renumbered ETF 10.12 (1r) (a), (b) and (c).

**SECTION 3.** ETF 10.12 (1) (d) is repealed.

**SECTION 4.** ETF 10.12 (1r) (d) is created to read:

ETF 10.12 (1r) (d) Deposits to the fixed and variable retirement investment trusts shall be accepted on the last working day of the month only, even if actually received earlier. Each investment shall be effective the last day of the month for purposes of investment valuation.

**SECTION 5.** ETF 10.12 (2) is repealed and recreated to read:

ETF 10.12 (2) INVESTMENT VALUATION. Investments by a separate retirement system shall be valued as follows:

(a) The current market values of the fixed and variable retirement investment trusts shall be determined as of the close of the last calendar day of the month.

(b) The market gain or loss of the fixed and variable retirement investment trusts shall each be determined for the month, net of administrative and investment costs.

(c) Each separate retirement system's share of the respective retirement investment trust's market gain or loss shall be determined and credited effective the close of the last calendar day of the month.

(d) Each separate retirement system's share of the retirement investment trust's market gain or loss shall be calculated as the total retirement investment trust's gain or loss multiplied by that separate retirement system's proportionate share of the average daily net assets available for investment during the month.

(e) The fixed or variable retirement investment trust's average daily net assets available for investment during the month shall be calculated as the sum of its daily beginning asset balances divided by the number of calendar days in the month.

(f) Each separate retirement system's average daily net assets available for investment during the month shall be calculated as the sum of its daily beginning asset balances divided by the number of calendar days in the month.

**SECTION 6.** ETF 10.12 (4) (c) (intro.) is amended to read:

ETF 10.12 (4) (c) (intro.) Withdrawals by a separate retirement system shall be limited in any calendar month to one withdrawal paid on the ~~first~~ last working day of the month of the greater of:

**SECTION 7.** ETF 10.12 (4) (d) is created to read:

ETF 10.12 (4) (d) For investment valuation purposes, withdrawals shall be treated as if effective at the close of the last calendar day of the month.

**SECTION 8.** ETF 10.12 (5) is created to read:

ETF 10.12 (5) PARTICIPATING EMPLOYERS ELIGIBLE. (a) "Separate retirement system" for purpose of this section and Wis. STAT. § 40.03 (1) (n) and (2) (q) means a pension benefit plan which is all of the following:

1. Established by the state or a political subdivision of the state which is also a participating employer subject to the provisions of the Wisconsin retirement system under s. 40.21, Stats.
2. A governmental plan as defined by 26 U.S.C. § 414(d) and 29 U.S.C. 1003(32).
3. Qualified for federal tax purposes under the applicable provisions of the internal revenue code.
4. Maintained and administered for the exclusive benefit of the employees of that employer and their beneficiaries.

(b) Any separate retirement system that fails to certify upon the department's request, and at least annually, that it continues to meet the criteria of par. (a), and any separate retirement system that the department determines does not meet the criteria of par. (a), shall be compelled to withdraw its entire investment as rapidly as permitted under sub. (4).

**SECTION 9.** ETF 10.12 (6) is created to read:

ETF 10.12 (6) TERMINATION OF PROGRAM. The employee trust funds board or the secretary of the department may close the investment option under s. 40.02 (1) (n) to any or all separate retirement systems and compel withdrawal of investments under sub. (4) if the board or the secretary determines that the separate retirement system investment interferes with the duty to manage, administer, invest and otherwise deal with the public employee trust fund solely for the benefit of the participants in the benefits plans under ch. 40 and their beneficiaries as provided in that chapter.

(end of rule text)

**Proposed Effective Date:**

This rule shall take effect on the first day of the month commencing after the date of publication as provided by s. 227.22 (2), Stats.

**Approved for Publication:**

This proposed rule is approved for publication in the Administrative Register.

Dated this \_\_\_\_\_ day of November, 2005

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Eric Stanchfield, Secretary  
Department of Employee Trust Funds