

**AGENDA AND NOTICE OF MEETING
STATE OF WISCONSIN
WISCONSIN RETIREMENT BOARD**

**Thursday, December 13, 2007
2:15 p.m.**

**Sheraton Madison Hotel
706 John Nolen Drive
Madison, Wisconsin**

NOTE: The Wisconsin Retirement Board will meet immediately following the Teachers Retirement Board meeting. If that Board finishes before 2:10 p.m., this Board may begin before 2:15 p.m. Please plan accordingly. Thank you.

Documents for this meeting are available on-line at:
http://etf.wi.gov/boards/board_wr.htm
To request a printed copy of any of the agenda items, please contact
Ann McCarthy, at (608) 261-0736.

➔ *Denotes action item*

- | | | |
|-----------|----------|---|
| 2:15 p.m. | ➔ | 1. Consideration of Minutes of Previous Meeting |
| 2:20 p.m. | | 2. Disability Statistics Summary Report |
| 2:25 p.m. | | 3. Variable Fund Asset Allocation |
| 2:35 p.m. | ➔ | 4. Proposed <i>Scope Statement</i> Concerning Amendments to Wisconsin Administrative Code ETF 11.11 Relating to Appointment of Board Counsel |
| 2:50 p.m. | ➔ | 5. Consideration of Administrative Rule <ul style="list-style-type: none">• Death and Late Reported Earnings |
| 3:10 p.m. | | 6. Miscellaneous <ul style="list-style-type: none">• Future Items for Discussion |
| 3:15 p.m. | | 7. Adjournment |

Times shown are estimates only.

The meeting location is handicap accessible. If you need other special accommodations due to a disability, please contact Ann McCarthy, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931. Telephone: (608) 261-0736. TTY: (608) 267-0676. E-mail: ann.mccarthy@etf.state.wi.us



STATE OF WISCONSIN
Department of Employee Trust Funds

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CORRESPONDENCE MEMORANDUM

DATE: November 15, 2007
TO: Teachers Retirement Board
Wisconsin Retirement Board
FROM: Diane Poole, Director
Disability Programs Bureau
SUBJECT: July 2007 – September 2007 Quarterly Disability Annuity Statistics

Attached is the Wisconsin Retirement System (WRS) *Disability Benefit Annuity Statistical Report* for July through September 2007. The report provides quarterly data on the following categories: Number of Annuities Started, Options Selected, Gender, Determination, Age, and Disability Type.

TRENDS

There has been little change in trends for this quarter, when compared to the same quarter in the past four years:

- The number of new disability annuities is down slightly (18 for the Teachers Retirement Board, compared to an average of 22.5; 43 for the Wisconsin Retirement Board compared to an average of 47.5).
- The most selected annuity option for the Wisconsin Retirement Board remains “100% Continued to Named Survivor (Joint Survivor) with 180 Payments Guaranteed.” However, this quarter, the most selected option for the Teachers Retirement Board was “Life Annuity with 180 Payments Guaranteed” – differing from the normal trend of “100% Continued to Named Survivor (Joint Survivor) with 180 Payments Guaranteed.”
- Females continue to be the predominant user of the \$40.63 Disability Retirement Annuity benefit.
- The majority of applications are approved with a very small number being denied.
- The predominant age group of applicants is 51-55.
- The prevalent disability types for the Teachers Retirement Board for this quarter in the last five years are: Mental Illness and Cancer. For the Wisconsin Retirement Board the prevalent disability types are: Orthopedic, Cancer, and Mental Illness.

DISABILITY PROGRAMS BUREAU WORKLOAD

Staffing

The Disability Program Bureau received an additional trust funds specialist position through the biennial budget. Recruitment is currently underway.

Reviewed and approved by Tom Korpady, Division of Insurance Services.	
Signature _____	Date _____

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Backlog

The required review of tax returns for the §40.65 program continues to operate under a backlog of about three years. Unfortunately, this causes delays in our work processes for detecting §40.65 overpayments, delays that can lead to overpayments to individuals who then face substantial financial burdens when asked to repay. We are hopeful that our additional trust funds specialist will eventually help alleviate some of the ongoing backlog.

PRIORITIES

The top priority for the Disability Programs Bureau is to approve disability benefits as quickly as possible so individuals are not without income. Approving a disability benefit requires extensive follow-up with the applicant, employer, and health care providers. An application can take up to a year to process because of this inherent dependency on outside sources to provide documentation. The second priority is to maintain existing disability accounts. This process requires obtaining updated medical and income information, which again requires extensive follow-up with outside sources.



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CORRESPONDENCE MEMORANDUM

DATE: December 4, 2007

TO: Employee Trust Funds Board
 Wisconsin Retirement Board
 Teachers Retirement Board

FROM: David H. Nispel, Deputy Chief Counsel

SUBJECT: Approval of Scope Statement Regarding Proposed Amendment to Wisconsin Administrative Code S. ETF 11.11

The Boards are asked to approve the attached Scope Statement.

The Department of Employee Trust Funds proposes to modify Wis. Admin. Code s. ETF 11.11, relating to appointment of legal counsel to advise the governing boards attached to the Department while the boards consider a final decision pertaining to an appeal. The Department requests approval of the attached Scope Statement. Approval of the Scope Statement is the first step in promulgating an administrative rule. The final version of the proposed rule will be submitted to the boards in the spring of 2008.

Currently, board staff arranges for legal counsel to advise the Employee Trust Funds Board, the Teachers Retirement Board, the Wisconsin Retirement Board, the Group Insurance Board, and the Deferred Compensation Board from one of three sources: 1) the Department of Justice, if the Department is a party to the appeal; 2) the Department's chief counsel, if the Department is not a party to the appeal; and 3) outside counsel, if neither the Department's chief counsel nor the Department of Justice is able to provide legal counsel. The current rule also prescribes a number of specific duties of the legal counsel.

The proposed amendment was prompted by the need to provide the boards with additional flexibility in the use of legal counsel. Under the proposed amendment covered by the scope statement, board staff may arrange for legal counsel for the boards as deemed necessary and in accordance with the statutory responsibilities of the Department of Justice to provide legal counsel. In addition, the proposed amendment would eliminate the itemized list of duties of the legal counsel contained in the current rule, and simply provide that the legal counsel shall provide legal representation to the board.

Reviewed and approved by Robert J. Conlin, Deputy Secretary.	
_____ Signature	_____ Date

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Statement of Scope of Proposed Rule Department of Employee Trust Funds

The Department of Employee Trust Funds (department) gives notice pursuant to Wis. Stat. s. 227.135, that it proposes to modify an existing administrative rule, specifically Wis. Admin. Code s. ETF 11.11. The rule relates to legal counsel advising the boards that are attached to the department while a board considers a final decision pertaining to an appeal.

DESCRIPTION OF RULE

The proposed modifications concern appointment of legal counsel by the Employee Trust Funds Board, Wisconsin Retirement Board, Teachers Retirement Board, Group Insurance Board, and the Deferred Compensation Board and the nature of the legal representation provided to those boards during their consideration of a final decision pertaining to a pending appeal. The proposed rule does not change the responsibility of the Department of Justice to provide legal counsel pursuant to Wis. Stat. s. 40.03 (3).

POLICY ANALYSIS

Under current law (Wis. Stat., s. 40.03 (3)), the Department of Justice is required to furnish legal counsel and prosecute and defend all actions brought by or against the Employee Trust Funds Board, the Group Insurance Board, the department, or any employee of the department as a result of the performance of the department employee's duties. Under the current administrative rules, board staff arrange for legal counsel to advise the Employee Trust Funds Board, Wisconsin Retirement Board, Teachers Retirement Board, Group Insurance Board, and the Deferred Compensation Board from one of three sources: 1) the Department of Justice, if the department is a party to the appeal; 2) the department's chief counsel, if the department is not a party to the appeal; and 3) outside counsel, if neither the department's chief counsel nor the Department of Justice is able to provide legal counsel. The current rule also prescribes a number of specific duties of the legal counsel.

Under the proposed modifications, board staff may arrange for legal counsel for the boards as deemed necessary and in accordance with Wis. Stat. s. 40.03 (3). In addition, the proposed modifications will eliminate the specific duties of the legal counsel contained in the current rule and simply provide that the legal counsel shall provide legal representation to the board. The proposed modifications will provide the boards with additional flexibility in the use of legal counsel.

STATUTORY AUTHORITY

Wis. Stat. ss. 40.03 (2) (i) and 227.11 (2) (a) provide the authority for the proposed rule.

ESTIMATE OF AGENCY STAFF TIME TO DEVELOP RULE:

The Department estimates that state employees will spend 40 hours to develop this rule.

ENTITIES LIKELY TO BE AFFECTED BY THE PROPOSED RULE

The proposed modifications would affect the various boards attached to the department, the department itself, and the Department of Justice.

SUMMARY OF AND COMPARISON TO FEDERAL REGULATIONS

No specific federal regulation is implicated by this rulemaking. There is no impact on the provisions of the Internal Revenue Code regulating qualified pension plans. Similarly, there is no impact on Wis. Stat. s. 40.015, which requires that the Wisconsin Retirement System be maintained as a qualified plan.

I have reviewed this Statement of Scope and approve it for publication in the Administrative Register this _____ day of _____, 200_.

David A. Stella, Secretary
Department of Employee Trust Funds

**State of Wisconsin
Department of Employee Trust Funds,
Employee Trust Funds Board, Teachers Retirement Board
and
Wisconsin Retirement Board**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #07-068

FINAL RULE to create ETF 20.37 regarding the status of a non-annuitant Wisconsin Retirement System participant at death, for purposes of determining the applicable death benefit.

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Agency Person to be Contacted for Questions

Please direct any questions about the proposed rule to Robert Weber, Chief Counsel, Office of Legal Services, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 266-5804. E-mail address: rob.weber@etf.state.wi.us.

Statement Explaining Need for Rule

This rule making is needed to codify the Department’s interpretation of s. 40.71 (1) (b), Stats., and eliminate a potential misreading of the last clause of the statute. The last clause might be misread to imply that if an employer terminated an employee, but did not report the termination to the Department until after the employee died, then the death benefits would be determined as if the decedent was “deemed” to be an active employee at the time of death. The codified interpretation will better effectuate the purpose of the statute and also reflect the Department’s general policies of treating participants in the Wisconsin Retirement System impartially and of administering their benefits in accord with the statutory eligibility criteria.

Analysis Prepared by the Department of Employee Trust Funds

1. Statute interpreted:
Section 40.71 (1) (b), Stats.

2. Statutory authority:

Sections 40.03 (2) (i) and 227.11 (2) (a), Stats.

3. Explanation of agency authority:

By statute, the DETF Secretary is expressly authorized, with appropriate Board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin Statutes. Also, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statute or rule:

Section 40.02 (46), Stats., which defines a participating employee, including the criteria that the person be "... an employee who is currently in the service of, or an employee who is on a leave of absence from, a participating employer"

Section 40.02 (26), Stats., which defines "employee" and provides in part that, "... an employee is deemed to have separated from the service of an employer at the end of the day on which the employee last performed services for the employer, or, if later, the day on which the employee-employer relationship is terminated because of the expiration or termination of leave without pay, sick leave, vacation or other leave of absence."

Section ETF 10.08 (3) (a), Wisconsin Admin. Code, governs the date of termination for purposes of purposes of establishing eligibility to receive benefits from the Wisconsin retirement system, including separation benefits, lump sum benefits and retirement annuity benefits. That rule expressly provides that the date of termination is the earliest of several listed alternatives, among which are the expiration of an unpaid leave of absence (when the termination is based on failing to return to work after such a leave), the date the employer discharged the employee, the date the employee's resignation is effective, and the date of the employee's death.

5. Plain language analysis:

The purpose of this rule is to codify an interpretation of s. 40.71 (1) (b), Stats., and eliminate a potential misunderstanding. The clarified interpretation will better effectuate the purpose of the statute and also reflect the Department's general policies of treating participants in the Wisconsin Retirement System impartially and of administering benefits in accord with the statutory eligibility criteria.

This rule applies to death benefits payable because of the death of a person who was not an annuitant of the Wisconsin Retirement System. The rule will codify that a person's actual status on the date of the person's death determines whether the death benefits payable from the Wisconsin Retirement System are those for an active employee or a former employee. If the person's employment

was terminated prior to the date of death, then the benefits payable will be those appropriate for a former employee. The date the employer's report is received by the Department will not dictate the benefits due.

Section 40.71 (1) (b), Stats., is one of several statutes that determines whether a deceased participant is treated as an active employee, a former employee or an annuitant for purposes of paying the applicable death benefits from the Wisconsin Retirement System. This particular provision states:

If the date of death is less than one year after the last day for which earnings were paid, a participant is deemed a participating employee on leave of absence, notwithstanding the fact that no formal leave of absence is in effect, if the participating employer for which the participant last performed services as a participating employee has not filed notice of the termination of employment prior to the employee's death.

The purpose of the statute is clearly to treat a decedent whose employment had not been formally terminated as a person on leave of absence, for up to a year. Participating employees granted a leave of absence continue to be participating employees, as expressly provided by s. 40.02 (46), Stats.

It has come to the Department's attention that a misreading of the last clause of the statute is possible. Instead of referring to a termination that occurred prior to the employee's death, the last clause might be misread to imply that if an employer terminated an employee, but did not notify the Department of the termination until after the employee died, then the death benefits would be determined as if the decedent was "deemed" to be an active employee at the time of death. A clear interpretation of the last clause of s. 40.71 (1) (b), Stats., is necessary in order for the Department to calculate and pay the correct death benefits.

The interpretation to be promulgated by this rule will do nothing to change the one-year presumption in s. 40.71 (1) (b), Stats., that a deceased employee who was not terminated prior to death was an employee at death, even if no formal leave of absence had been granted.

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

There are no known existing or proposed federal regulations that are intended to address the activities regulated by this rule.

7. Comparison with rules in adjacent states:

Although there are a number of governmental retirement plans in Illinois, Iowa, Minnesota and Michigan, their administrative rules are not directly relevant to

interpreting the Wisconsin statutes governing the Wisconsin Retirement System. Governmental plans differ in the degree to which the terms of the plan are established by enabling legislation or left to subsequent administrative rulemaking or other means.

Illinois

There appear to be no Illinois administrative rules relating to the belated reporting of the severance or termination of employment of a person who subsequently dies, and the computation of death benefits from a public employee pension system.

A rule adopted by the State Employees Retirement System, Ill. Admin. Code title 80 § 1540.255 e), does not deal with the computation of a death benefit, but does provide that if the member has elected to use payroll deductions for the purchase of permissive service credits or reinstating past service credits, the deductions end upon the earliest of several alternative events, including the employee's death or termination of employment.

For purposes of making distributions, the rules governing the State of Illinois Employees Deferred Compensation Plan treat the employee's severance from employment or death as two distinctly different events. Death is not included in the definition of severance from employment. See Ill. Admin. Code title 80 §§ 2700.200 and 2700.700 b) 1) and 2).

Iowa

There appear to be no Iowa administrative rules relating to the belated reporting of the severance or termination of employment of a person who subsequently dies, and the computation of death benefits from a public employee pension system.

Michigan

There appear to be no Michigan administrative rules relating to the belated reporting of the severance or termination of employment of a person who subsequently dies, and the computation of death benefits from a public employee pension system.

Minnesota

There appear to be no Minnesota administrative rules relating to the belated reporting of the severance or termination of employment of a person who subsequently dies, and the computation of death benefits from a public employee pension system.

8. Summary of factual data and analytical methodologies:

The Department considered, and rejected, the alternative interpretation of the statute that would permit an employer to delay reporting a termination and thereby possibly increase the benefits payable if the former employee should die. The Department has a duty to administer benefits in accord with the laws governing the Wisconsin Retirement System. These laws include requirements for employers to make accurate, regular and timely reports to the Department concerning covered employees. The alternative interpretation would conflict with those duties by appearing to permit a delay in reporting terminations of employment. Any effort to administer such an interpretation would also likely give rise to differing treatment of similarly situated former employees. The Department has a duty to treat participants impartially within the laws governing the retirement system.

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

The rule can have no effect on small businesses because private employers and their employees do not participate in, and cannot be covered by, the Wisconsin Retirement System. The Wisconsin Retirement System is required to be maintained and administered as a qualified governmental plan, covering only governmental employees.

10. Anticipated costs incurred by private sector:

None.

11. Effect on small business:

No effect.

Regulatory Flexibility Analysis:

The proposed rule has no significant effect on small businesses because only governmental employers and their employees may participate in the benefit programs under ch. 40 of the statutes administered by the Department of Employee Trust Funds.

Fiscal Estimate:

The proposed rule has no direct fiscal impact since it codifies a Department interpretation already in effect. The rule generates no revenues for any employer. The rule itself has no effect on the fiscal liabilities of any county, city, village, town, school district, technical college district or sewerage. The rule has no state fiscal effect during the current biennium and no fiscal impact on state funds.

Text of Proposed Rule

SECTION 1. ETF 20.37 is created to read:

ETF 20.37 Death benefits. (1) TERMINATION PRIOR TO DEATH. If employment with a participating employer actually terminated prior to the death of the participant, then the participant may not be treated as a participating employee for purposes of s. 40.71, Stats., regardless of when notice of the termination is filed with the department.

Note. If the termination of employment occurs on the last day on which the employee actually performs services for the employer, and the death occurs on the same day, the participant will be treated as an employee through the end of that day, as provided by s. 40.02 (25), Stats.

(end of rule text)

Effective Date

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in Wis. Stat. s. 227.22 (2).



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 07-068

AN ORDER to create ETF 20.37, relating to the status of a non-annuitant Wisconsin retirement system participant at death, for purposes of determining the applicable death benefit.

Submitted by DEPARTMENT OF EMPLOYE TRUST FUNDS

07-05-2007 RECEIVED BY LEGISLATIVE COUNCIL.

07-25-2007 REPORT SENT TO AGENCY.

RNS:WF
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

Response to Legislative Council Staff Recommendations

The Legislative Counsel staff recommended no changes.

List of Persons Appearing or Registering For or Against the Rules.

No persons, other than DETF staff, appeared or registered either for or against the rule at the public hearing on August 14, 2007.

Summary of Comments Received at Public Hearing.

No person wished to testify concerning the rule. The record was held open for written comments until 4:30 p.m. on August 15, 2007, but no comments were received.

Modifications to Rule as Originally Proposed as a Result of Public Comments

None.

Modifications to the Analysis Accompanying the Proposed Rule.

The sixth paragraph of the “Plain Language Analysis,” beginning “It has come to the Department’s attention ...” has been revised slightly for clarity.

Modifications to the Initial Fiscal Estimate

None.

Board Authorization for Promulgation

This final draft report on Clearinghouse Rule #07-068 has been duly approved for submission to the Legislature, and for promulgation, by the Department of Employee Trust Funds and by:

The Employee Trust Funds Board at its meeting on ____.

The Teachers Retirement Board at its meeting on ____.

The Wisconsin Retirement Board at its meeting on ____.

Respectfully submitted,

DEPARTMENT OF EMPLOYEE TRUST FUNDS

David Stella
Secretary

Date: _____



STATE OF WISCONSIN
Department of Employee Trust Funds

David A. Stella
SECRETARY

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CORRESPONDENCE MEMORANDUM

DATE: December 3, 2007

TO: Teachers Retirement Board
Wisconsin Retirement Board
Employee Trust Funds Board

FROM: Robert Weber, Chief Counsel

SUBJECT: Approval of Final Draft Report on Clearinghouse Rule #07-068, Relating to the Status of a Non-annuitant at Death for Purposes of a Death Benefit

The Department asks the Board to formally approve the attached Final Draft Report on CR #07-068 so that the rule can be submitted to the Legislature for promulgation.

This rule creates a new WIS. ADMIN. CODE § ETF 20.37 codifying the Department's interpretation of WIS. STAT. § 40.71 (1) (b), that the deceased individual was not a participating employee at the time of death if the employment was actually terminated sometime before the day on which the employee died.

This Department interpretation is consistent with the definitions of "employee" and "participating employee" found in WIS. STAT. § 40.02 (26) and (46), respectively, and is in accord with WIS. ADMIN. CODE § ETF 10.08 (3) (a) concerning the date of termination of employment for purposes of receiving Wisconsin Retirement System (WRS) benefits.

WIS. STAT. § 40.71 (1) (b) is one of several provisions that governs whether a deceased WRS participant is considered an active employee, a former (i.e., "inactive") employee, or an annuitant for purposes of paying death benefits from the WRS. This particular statute treats a decedent, whose employment had not been formally terminated as being an employee on an informal leave of absence, for up to a year after the last date for which the person was paid.

This rule making does nothing to alter that presumption. Rather, the focus of the rule making is to clarify the phrase "... has not filed notice of the termination of employment prior to the employee's death" to eliminate a potential misunderstanding and make certain that the correct death benefit is paid. This clause might otherwise be misread to imply that if an employer terminated an employee, but did not notify the Department of the termination until after the employee died, then the death benefits would be determined as if the decedent was "deemed" to be an active employee at the time of death.

Reviewed and approved by Robert J. Conlin, Deputy Secretary.

Signature

Date

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