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CORRESPONDENCE MEMORANDUM

DATE: June 2, 2011

TO: Employee Trust Funds Board
Teachers Retirement Board

FROM: Steve Hurley, Director
Office of Policy, Privacy and Compliance

SUBJECT: Draft of Proposed Administrative Rule for ETF and TR Board Elections

This memo is for informational purposes only. No Board action is required. However, any feedback from the Boards on the proposed rule would be appreciated.

On December 2, 2010, the Department presented to the Boards an early draft of a proposed Administrative Rule for Employee Trust Funds (ETF) and Teachers Retirement (TR) Board Elections. The attached proposed rule reflects changes to that early draft suggested by Board members at the December Board meeting. If the Boards are supportive of the attached draft, it will be sent to the Legislative Council Rules Clearinghouse and a final draft report will be developed.

Because 2011 Wisconsin Act 21 regarding the administrative rules process is effective on June 8, 2011, it is anticipated that the final draft report must be submitted for gubernatorial review prior to sending it to the Legislature. The Boards will have an opportunity to review and approve the final draft report before the final draft report is sent to the Governor.

Background

Wis. Admin. Code § ETF 10.10 governs elections to the ETF Board and the TR Board. The rule section was first established in April 1984 for elections to the TR Board. In May 1993, the section was expanded to cover elections to the ETF Board. By statute, there are two elected positions on the ETF Board and nine elected positions on the TR Board. The Department is responsible for scheduling elections, providing election notices, processing nomination petitions, distributing ballots, tabulating votes, setting aside invalid ballots for review by the election committee, and notifying candidates of election results.

Reviewed and approved by Robert Conlin, Deputy Secretary.
Signature Date 6/9/2011

Board	Mtg Date	Item #
TR	6.23.11	3A
ETF	6.23.11	4D

The original reason for amending the current rule was to permit elections to be conducted electronically or in a mixed-mode – for example: using Internet voting for those who want to vote electronically, and paper ballots for those who want to vote by traditional paper ballot. The ability to conduct elections electronically could increase voter participation and reduce costs related to traditional paper ballot elections, such as time spent manually handling ballots and tabulating votes. The results of electronic elections are available quickly, and can be more accurate than paper-based elections in which results are hand tabulated.

The attached draft reflects the following changes suggested by Board members:

Changes to ETF 10.10 According Board Members' Recommendations	
Special Situations	**ETF 10.10(11).** If there are multiple positions to be filled in an election category that do not have an equivalent amount of time remaining in their terms, the positions shall be allocated in the following manner: • If an election is held, the candidate with highest number of votes gets the position with longest term remaining; the candidate with second-highest number of votes gets the position with the next-longest term remaining, *etc.* • If no election is held, positions shall be selected by a random process.
Notification of Election Results	**ETF 10.10(13).** For both regular and special elections, the Department shall notify all candidates of election results <u>by certified mail</u>.
Retention of Election Materials	**ETF 10.10(14).** The Department shall retain Board election reports, nominating petitions and ballots for at least one year from the date that candidates are notified of the election results.

Policy Office staff will be available at the meeting to answer questions.

Attachment: Proposed ETF Administrative Rules for ETF and TR Board Elections (ETF 10.10)

June 2, 2011

Proposed ETF Administrative Rules for ETF and TR Board Elections

Text of Proposed Rule

Section 1. **ETF 10.10 (1), (1m) and (2) are amended to read:**

ETF 10.10 Employee trust funds board and teachers retirement board elections. (1) ~~The purpose of this~~ PURPOSE. This section ~~is to set forth~~ establishes procedures for all elections of ~~participating employees and annuitants~~persons to the employee trust funds board or the teachers retirement board, pursuant to ss. 15.16 (1) (d) and (f), 15.165 (1) and (3) (a) 1., 2., 6. and 7., and 40.03 (2) (p), Stats. Except where noted otherwise, these procedures ~~established in this section~~ shall apply for elections to either the employee trust funds board or the teachers retirement board.

(1m) DEFINITIONS. In this section:

(a) "Annuitant" has the meaning given in s. 40.02 (4), Stats.

~~(a)~~(b) "Ballot" means the paper or electronic form on which a voter records a vote that has been authorized for use in the election by the secretary.

~~(b)~~(c) "Election category" means the class of participating employees or annuitants who are eligible under s. 15.16 (1) (d) or (f), or 15.165 (3) (a) 1., 2., 6. or 7., Stats., to vote to elect a member to the employee trust funds board or the teachers retirement board.

~~(c)~~(d) "Participating employee" has the meaning given in s. 40.02 (46), Stats.

~~(d)~~(e) "Teacher" has the meaning given in s. 40.02 (55), Stats.

(2) SCHEDULING OF ELECTIONS. The secretary shall schedule an election when the term for an elective board position ~~on the employee trust funds board or the teachers retirement board~~ is due to expire or the position is vacated ~~due to resignation, death or~~ for any ~~other~~ reason.

(a) *Regular elections.* When a term is due to expire, the secretary shall schedule the election to ~~as~~ensure that the election is completed and the new board member announced prior to the date the new term commences.

(b) *Vacancies.* If an elective board position is vacant for any reason other than the term expiring, the secretary shall schedule an election at a time determined by the secretary. The annuitant or participating employee elected in an election to fill a position vacated prior to the end of a term shall serve the remainder of the unexpired term.

Section 2. **ETF 10.10 (3) and (4) are repealed and recreated to read:**

(3) CALL FOR NOMINATIONS. The department shall publish, in a manner determined by the secretary, the notice of the election, the nomination timetable and instructions explaining the nomination process for prospective candidates.

Drafting Note (not for inclusion in final rule): Language in the old 10.10 (3) relates to eligibility to vote, and has been moved, with some amendments, to the new 10.10 (7) ELIGIBILITY TO VOTE.

(4) NOMINATION PROCEDURES. Candidates shall be nominated by petition on forms provided by the department. Petitions and any other required forms for a candidate shall be received by the department no later than the petition filing date in the nomination time schedule published under sub. (3). A nominating petition received after such date is invalid. A candidate shall do all of the following:

(a) *Submit a nominating petition.* Submit to the department a nominating petition containing at least 25 but no more than 50 printed names and valid signatures of participating employees or annuitants eligible to vote in that election. The nominating petition shall contain the name and address of each signer's employer and the date signed. For annuitants, the name and address of the signer's employer shall be that of the signer's last participating employer in the Wisconsin retirement system. The department will verify the entries on the petition based on records in the department. Entries that cannot be conclusively verified shall not be counted. If more than 50 signatures are submitted, the department shall review for validity only the first 50 signatures based on the earliest date signed and disregard the balance.

(b) *Certify the nominating petition.* Sign the nomination petition to certify that all signers are eligible to vote in the election category for which the candidate is running.

(c) *Submit a candidate statement.* Submit a candidate information form to the department containing no more than 150 words. The department shall print no more than the first 150 words of the candidate's information and make it available to eligible voters with the ballots. The candidate must sign the candidate information form verifying the accuracy and truthfulness of the information provided.

Note: A Board Election Packet containing the Nominating Petition form and Candidate Information form can be obtained from the department by contacting the department's board liaison at 877-533-5020.

Drafting Note (not for inclusion in final rule): Language in the old 10.10 (4) relates to distribution of voting materials for teachers board elections and eligibility for voting in

teachers board elections. The language has been moved, with some amendments, to the new 10.10 (7) ELIGIBILITY TO VOTE, and 10.10 (8) DISTRIBUTION PROCEDURES FOR PAPER BALLOTS.

Section 3. **ETF 10.10 (5) is created to read:**

(5) NOMINATIONS FOR THE EMPLOYEE TRUST FUNDS BOARD. Any person who meets the eligibility requirements of s. 15.16 (1) (d) or (f), Stats., on the date the person files nomination papers with the department and who plans to continue meeting the eligibility requirements upon election, may be nominated for election to the employee trust funds board by satisfying the requirements of par. (4) (a) through (c) within the calendar dates established by the department.

Section 4. **ETF 10.10 (6) and (7) are repealed and recreated to read:**

(6) NOMINATIONS FOR THE TEACHERS RETIREMENT BOARD. Any person who meets the eligibility requirements of s. 15.165 (3) (a) 1., 2., 6. or 7., Stats., on the date the person files nomination papers with the department and who plans to continue meeting the eligibility requirements upon election, may be nominated for election to the teachers retirement board by satisfying the requirements of par. (4) (a) through (c) within the calendar dates established by the department.

Drafting Note (not for inclusion in final rule): Language in the old 10.10 (6) relates to eligibility to vote, and has been moved, with some amendments, to the new 10.10 (7) ELIGIBILITY TO VOTE.

(7) ELIGIBILITY TO VOTE.

(a) *General requirements.* A person shall be eligible to vote if the person is an annuitant or participating employee in the election category for which the election is being held and meets the other voting eligibility requirements in this section at the time ballot materials are printed for distribution and the department has record of their eligibility.

(b) *Teachers retirement board elections.* Participating employees of the state department of public instruction; state department of health services; state technical college system; and the state educational communications board, who are classified as teachers under the Wisconsin retirement system, are not employed by a public school or a technical college system district and may not vote in any election to elect a teacher to serve on the teachers retirement board.

(c) *Teacher in public school and a technical college system district.* For a teacher concurrently employed by both a public school and a

technical college system district, the teacher shall be eligible to vote in both categories specified under s. 15.165 (3) (a) 1. and 2., Stats.

Drafting Note (not for inclusion in final rule): Language in the old 10.10 (7) relating to nomination to the Teachers Retirement Board has been moved, with some amendments, to the new 10.10 (5) NOMINATION TO THE TEACHERS RETIREMENT BOARD. Language in the old 10.10 (7) relating to nominations to the Employee Trust Funds Board is in the new 10.10 (6). Provisions relating to nomination procedures in the old 10.10 (7) are in the new 10.10 (4) NOMINATION PROCEDURES.

Section 5. **ETF 10.10 (8) is repealed.**

Drafting Note (not for inclusion in the final rule): 10.10 (8) relates to procedures for distribution of ballots and is problematic for non-paper elections. It is better that these detailed procedures simply be adopted election policy as authorized by the Secretary and changed as necessary to take advantage of new technologies and efficiencies.

Section 6. **ETF 10.10 (9) is repealed, renumbered 10.10 (8) and recreated to read:**

(8) VOTING. The secretary may conduct the election by any appropriate means, including paper ballots, electronic ballots, or a combination of such methods.

(a) *Voting procedure.* The secretary shall approve a voting procedure that ensures that only persons eligible to vote are permitted to cast a vote, and that only one vote is recorded for each person who casts a vote in an election. Persons eligible to vote shall cast their votes by indicating their choice of candidates in accordance with voting instructions approved by the secretary.

(b) *Voting when there are multiple teachers retirement board positions to be filled.* If there is more than one teachers retirement board position to be filled in an election category and an election is held, voters may vote for as many candidates, in the appropriate election category, as there are positions to be filled.

Proposed ETF Administrative Rules for ETF and TR Board Elections

Section 7. **ETF 10.10 (10) is renumbered 10.10 (9) and amended to read:**

(9) CERTIFICATION OF ELECTION RESULTS. If an election is held, the respective ~~The teachers retirement~~ board shall appoint an election committee that shall consist of the secretary of the department or the secretary's designee and 2 ~~teachers retirement~~ board members who are not running for reelection ~~to determine the election results~~. ~~The employee trust funds board shall appoint an election committee which shall consist of the secretary of the department or the secretary's designee and 2 employee trust funds board members who are not running for reelection to determine the election results.~~ A majority of the election committee appointed by the respective boards shall determine the validity of ballots set aside by the department and certify the election results.

Section 8. **ETF 10.10 (11) is renumbered 10.10 (10) and amended to read:**

(10) VERIFICATION OF ELECTION RESULTS. ~~The department shall review each ballot by checking the signature against the name on the ballot.~~ The department shall set aside ballots that it believes may be invalid ~~under pars. (a) to (d)~~ for review by the election committee. The election committee shall deem a ballot invalid if the ballot has not been cast according to the procedures approved by the secretary under sub. (8) (a). In addition, the election committee shall deem a ballot invalid if any of the following apply:

~~(a) The signature is not the same as the name on the ballot.~~
~~(b) The ballot is not signed.~~
(a~~c~~) Too many candidates have been voted for on the ballot.
(b~~d~~) A ballot is so defective that the committee cannot determine with reasonable certainty for whom the ballot was cast.
(c~~e~~) The ballot contains the name of a write-in candidate.
(d) The ballot was submitted by an ineligible voter.
(e) The ballot was not received within the period prescribed by the election notice.

Section 9. **ETF 10.10 (12) is renumbered 10.10 (11) and amended to read:**

(11) SPECIAL SITUATIONS. (a) *Insufficient number of candidates for holding an election.* If the number of candidates ~~who file~~ whose nomination ~~papers~~ petitions are approved by the department is equal to or less than the number of positions to be filled within an election category, all of the following shall apply:

1. the department shall not schedule an election;
2. the election committee shall not be appointed or convened; and
3. the ~~election committee~~ department shall declare all candidates ~~to be~~as elected.

(b) *Multiple positions to be filled in an election category that do not have an equivalent amount of time remaining in the term.* If there are multiple positions to be filled within an election category and the vacant positions have different amounts of time remaining in their terms, the following shall apply:

1. If an election has been held, the candidate with the most votes will receive the position with the most time remaining. The candidate with the second most votes will receive the position with the second most time remaining, and so forth for any remaining candidates and positions.
2. If an election is not held in accordance with par. (a), and there is more than one candidate, positions will be selected by the drawing of lots. If there is only one candidate and multiple vacant positions, the candidate shall receive the position with the maximum time remaining in its term.

Section 10. **ETF 10.10 (13) is repealed.**

Drafting Note (not for inclusion in final rule): Language in the old 10.10 (13) is retained in the new 10.10 (8) (b). The provision states that where there is more than one teacher retirement board position to be filled in a category and an election is held, voters may vote for as many candidates in the appropriate election category as there are positions to be filled. For example, on the teachers retirement board the public school teacher category has within it six positions that are elected. If there are two open public school teacher positions, voters can vote for two candidates in an election for that position. There is no equivalent language for the employee trust funds board because that board's elected categories only permit one person to fill a position, i.e., one annuitant representative and one educational support personnel representative.

Section 11. **ETF 10.10 (15) is renumbered 10.10 (12) and amended to read:**

(12) TABULATION OF VOTES. Candidates receiving the largest number of votes shall be elected. The election committee shall break a tie by the drawing of lots. The counting of ballots shall be conducted under the direction of the secretary or designee.

Section 12. **ETF 10.10 (16) is renumbered 10.10 (13) and amended to read:**

(13) NOTIFICATION OF ELECTION RESULTS. For elections scheduled because a term is due to expire, the department shall notify all candidates of the results by certified mail before May 1 following the close of the election. If the department calls an election for any reason other than the expiration of a term, the department shall notify all candidates by certified mail of the results of the election within 15 days of the close of the election.

Section 13. **ETF 10.10 (17) is renumbered 10.10 (14) and amended to read:**

(14) RETENTION OF BOARD ELECTION MATERIALS. The department shall retain election reports, nominating petitions and ballots for at least 1 year ~~45 days~~ from the date the candidates are notified in sub. (13). ~~If a candidate wishes to request a recount, the candidate shall submit the request to the department within 30 days of the date the candidates are notified of the election results. A recount shall be conducted under the direction of the secretary or his or her designee.~~

Drafting Note (not for inclusion in final rule): Language in the old 10.10 (17) relating to retention of nominating petitions and ballots for 45 days from the date candidates are notified, has been amended to one year to be in accordance with the Department's Records Retention/Disposition Authorization for election materials, which indicates that election materials are kept for at least one year. Language in old 10.10 (17) relating to recounts is retained, with some amendments, in the new 10.10 (15).

Section 14. **ETF 10.10 (15) is created to read:**

(15) RECOUNT OF RESULTS. A candidate may request no more than one recount per election. To request a recount, the candidate shall submit a written request to the secretary within 10 business days of the date that the candidates were notified of the certified election results. A recount shall be conducted under the direction of the secretary or designee. If the recount results change the ranking of the candidates, the recount results shall be certified by the election committee and shall stand as the final election results.

History: Cr. Register, March, 1984, No. 339, eff. 4–1–84; r. (5) and am. (7) (intro.), Register, January, 1985, No. 349, eff. 2–1–85; am. (10), Register, September, 1992, No. 441, eff. 10–1–92; am. (1) to (7) (a), (7) (c) to (11) (b), (d), (12), (13) and (15) to (17), cr. (1m) and (11) (e), r. (14), Register, April, 1993, No. 448, eff. 5–1–93; corrections made under s 13.93 (2m) (b) 6., Stats., Register, July, 1997, No. 499; am. (1), (1m) (b) and (7) (intro.), Register, December, 2000, No. 540, eff. 1–1–01; correction in (6) made under s. 13.92 (4) (b) 6., Stats., Register September 2009 No. 645.