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Correspondence Memorandum

Date: May 12, 2020
To: Deferred Compensation (DC) Board
From: Laura Patterson, Policy Advisor
 Office of Policy, Privacy & Compliance
Subject: Updates to the Conduct of Board Meetings Policy

ETF recommends the Board approve the revised Conduct of Board Meetings Policy for incorporation into the Board Governance Manual.

The Department of Employee Trust Funds (ETF) has updated the attached Conduct of Board Meetings Policy after a recent review for compliance, errors, and consistency. Two revisions were made and tracked in the attached policy.

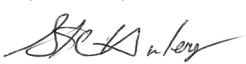
The first revision amends the policy’s definition of “quorum” to ensure the policy complies with Wisconsin’s statutory quorum requirements. The previous policy excluded vacant Board seats for purposes of determining quorum. Under the updated policy, the entire Board membership will be considered in determining quorum.

The second revision is based on recommendations made by ETF General Counsel, David Nispel, in the Open Meetings Law Update he presented at the DC Board Meeting on March 7, 2017 (Ref. DC | 3.7.17 | 7). In 2016, a letter from the Department of Justice to Winnebago County Counsel provided that a notice must be published in advance when a quorum of members of a board or committee attends another meeting to gather information about a subject within the body’s realm of authority. With the multiple boards and committees associated with ETF, there is a risk that a quorum of members could attend another meeting and inadvertently create a meeting under the law.

Therefore, ETF General Counsel recommended that Board members who plan to attend a meeting of another governing Board or Committee should inform the ETF Board Liaison well in advance of the meeting, so that a revised notice may be issued if necessary. The attached policy generally incorporates those recommendations as a requirement under the policy.

Staff will be at the Board meeting to answer any questions.

Attachment: Conduct of Board Meetings Policy

Reviewed and approved by Steve Hurley, Director, Office of Policy, Privacy, and Compliance  Electronically Signed 5/21/20
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Board	Mtg Date	Item #
DC	6.11.20	10



DEFERRED COMPENSATION BOARD

Adopted: March 12, 2015

Revised: March 7, 2019

CONDUCT OF BOARD MEETINGS POLICY

Selection of Board Officers: Chairperson, vice Chairperson and Secretary

[Wis. Stat. § 15.07 \(2\)](#) provides that the Chairperson, Vice Chairperson and Secretary of the Deferred Compensation Board must be elected in the respective Board's first meeting each calendar year. Those having held office are eligible to be re-elected for successive terms.

Frequency of Meetings

[Wis. Stat. § 15.07 \(3\) \(b\)](#) requires that the Deferred Compensation Board meet at least once per year. The Board may meet at other times on the call of the chairperson or a majority of its members.

Open Meeting

State law requires that the business of the Board be conducted in public. Therefore, during Board meetings, Board members shall exercise principles of good governance and refrain from communicating electronically (e.g. by e-mail, text or social media) with their fellow Board members regarding Board business (i.e. any matter that may come before the Board for action).

Board members are not required to be physically present to attend a Board or committee meeting. Any or all Board members may attend a Board meeting and vote via a communication platform – including teleconference – that provides, at a minimum, simultaneous aural communication between those present, provided:

1. The meeting is properly noticed;
2. The meeting is accessible to the public consistent with statutory requirements; and
3. There is a physical location that accommodates any member of the public who wishes to attend.

Quorum and Voting

A quorum is the minimum number of Board members that must be present in order to transact the Board's official business. A majority of the Board's members ~~hip (excluding vacant seats)~~ constitutes a quorum. In the absence of a quorum, the only official action the Board may take is to adjourn the meeting to another time and/or date. Two Board members shall constitute a quorum for the transaction of business at an advisory subcommittee meeting such as the Investment Committee.

Unless a more restrictive provision is adopted by the Board, a quorum may act in any matter within the jurisdiction of the Board. All official actions of the Board shall be taken by a majority vote with a quorum present. A roll call vote shall be taken upon the request of any Board member.

Agenda

Board members shall submit any recommended agenda topics to the Board chairperson. The agenda for each meeting is prepared by the Department for approval of the Board chairperson. The agenda is made available to the public and to Board members in advance of the meeting.

Notice of Meetings

The Wisconsin Open Meetings Law provides that public notice of all Board meetings must be given to the official state newspaper and to any news media that have filed a written request for such notice. Under [Wis. Stat. § 19.84 \(2\)](#), the notice must contain the time, date, place and subject matter of the meeting, including subjects intended to be considered in any contemplated closed session.

In 2007, the Wisconsin Supreme Court declared that meeting notices must conform to a “reasonableness” standard in describing the subject matter of the public meeting. The net result is that generic descriptions of subject matter are prohibited and notices must be detailed enough such that a citizen interested in a specific subject would be aware from the meeting notice that the subject might be discussed. (State ex rel. Buswell v. Tomah Area Sch. Dist., 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804.)

Regarding notices for meetings that include closed sessions, the law provides that if the presiding officer or the officer’s designee knows at the time he or she gives notice of the meeting that a closed session is contemplated, the notice must contain the subject matter to be considered in closed session. The notice “must contain enough information for the public to discern whether the subject matter is authorized for closed session under [§ 19.85 \(1\)](#).”

Notice must be given at least 24 hours in advance of the meeting, except for good cause where such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting. Sundays and legal holidays are disregarded in calculating the 24-hour notice.

Generally, a joint meeting notice must be given when a quorum of members of a Board or Committee attends another meeting to gather information about a subject over which they have ultimate decision-making responsibility. Therefore, if any Board member or Committee member plans to attend a meeting of another Board or Committee, the member shall inform the Board Liaison at least 72 hours prior to the meeting. The Board Liaison will determine if a quorum will be present and if so, will prepare a joint meeting notice to replace the existing notice, or take other appropriate action.

Closed Sessions

A “closed session” is a meeting from which the public is excluded. Every Board meeting must initially be convened in open session. All Board business must be initiated, discussed and acted upon in open session unless one of the exemptions in [Wis. Stat. § 19.85 \(1\)](#) applies.

A closed session may be held only for those specific purposes listed in Wis. Stat. § 19.85 (1) (a) - (h) (See the reference section of this policy for a copy of Wis. Stat. § 19.85). To go into closed session, Wis. Stat. § 19.85 (1) provides that a motion must be made and carried by a majority vote. The vote of each member on a motion to go into closed session must be ascertained and recorded in the minutes.

The subject matter to be discussed and the specific provisions in Wis. Stat. § 19.85 (1) authorizing the closed session must be announced by the presiding officer to those present at the meeting in which the motion is made. No business may be taken up at the closed session except that which relates to the matters contained in the presiding officer’s announcement of the closed session.

Public Participation

Members of the public may attend any open session of any Board meeting. Members of the public may not have the floor unless specifically allowed by the Chairperson, with the consent of a majority of the Board members.

Determination of Presiding Officer

1. If present, the Chairperson presides.
2. If the Chairperson is absent, the Vice Chairperson presides.
3. If the Chairperson and Vice Chairperson are absent, the Secretary presides.
4. If all officers are absent, the Board shall designate a presiding officer.

Rules of Order

The rules contained in the current edition of *Robert's Rules of Order, Newly Revised* shall govern meetings in all cases to which the rules are applicable and when such rules are not inconsistent with any special rules of order the Board may adopt. A copy of the latest volume is available from the Board Liaison.

Committees

Upon adoption of a motion to establish an advisory committee by a vote of a majority of a quorum of the Board, the chairperson shall appoint members of the committee and may designate appointees to serve as committee chair and vice chair.

- Committees shall have a minimum of two members.
- The Board chair shall promptly fill vacancies on committees.

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- Committees shall meet on the call of the committee chairperson. Any motion before a committee may be passed by a unanimous vote of the committee.
- A committee may only act within the scope of the committee charter adopted by the Board.
- Committees shall report to the full Board on their activities at the next meeting of the full Board. This report may be made in open or closed session, depending on the subject matter.
- Any Board member may attend any committee meeting, although only committee members may be counted for quorum or voting purposes.
- Unless otherwise provided, the provisions of this policy document pertaining to agendas, notices, closed sessions, public participation, determination of presiding officer, and rules of order shall also apply to committee meetings, with references to the officers being to the respective officers of the committee.

REFERENCE MATERIAL – CLOSED SESSIONS

SAMPLE STATEMENTS FOR ENTERING INTO CLOSED SESSION

- “The Board will convene in closed session, pursuant to the exemptions contained in Wis. Stats. 19.85 (1) (a) for quasi-judicial deliberations.”
- “The Board will convene in closed session, pursuant to the exemptions contained in Wis. Stat. § 19.85 (1) (e) to deliberate or negotiate the investing of public funds.”

CLOSED SESSION STATUTES

Wis. Stat. § 19.85 Exemptions. (1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer’s announcement of the closed session. A closed session may be held for any of the following purposes:

- (a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.
- (b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a Board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employee or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employee or person licensed requests that an open session be held.
- (c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

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- (d) Except as provided in s. 304.06 (1) (eg) and by rule promulgated under s. 304.06 (1) (em), considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.
- (e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.
- (ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.
- (eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.
- (em) Deliberating under s. [157.70](#) if the location of a burial site, as defined in s. [157.70 \(1\) \(b\)](#), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.
- (f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.
- (g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
- (h) Consideration of requests for confidential written advice from the elections commission under s. [5.05 \(6a\)](#) or the ethics commission under s. [19.46 \(2\)](#), or from any county or municipal ethics board under s. [19.59 \(5\)](#).

For ETF internal use:

Adopted*	Deferred Compensation Board Reviewed or Revised	Group Insurance Board Reviewed or Revised	Retirement Boards (ETF, TR, WR) Reviewed or Revised
3/12/2015	3/7/2019	6/16/2018	9/19/2019

*Individual Board Policies may vary.