



**STATE OF WISCONSIN**  
**Department of Employee Trust Funds**  
 David A. Stella  
 SECRETARY

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**CORRESPONDENCE MEMORANDUM**

**DATE:** August 24, 2009

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

**FROM:** David H. Nispel, General Counsel

**SUBJECT:** Wisconsin Administrative Code, s. ETF 11.11 Revisions

**Staff recommends that the Boards approve the final version of this proposed rule.**

The Department of Employee Trust Funds (ETF) proposes to amend s. ETF 11.11, relating to legal counsel advising the boards that are attached to ETF while a board considers a final decision pertaining to an appeal. The proposed revision would allow board staff to arrange for legal counsel for the boards as deemed necessary and in accordance with s. 40.03 (3), Stats. Under that statute, the Department of Justice provides legal counsel and prosecutes and defends all actions brought by or against the boards or ETF. The proposed rule also would simply provide that the legal counsel shall provide legal representation to the board, rather than specifying specific duties. These changes will provide the boards with additional flexibility in using legal counsel services.

Board approval of the final version of the proposed rule is the next step in the administrative rule promulgation process. The Group Insurance and Deferred Compensation Boards still need to approve the rule. If approved by all the boards, the rule will be submitted to the State Legislature for consideration. Prior to this date, ETF has taken the following action:

- Scope statement approved by all the boards and ETF Secretary (2008)
- Scope statement published in the Wisconsin Administrative Register (May 15, 2008)
- Submitted the proposed rule and a report to the Legislative Council Administrative Rules Clearinghouse (July 1, 2009)

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

Board	Mtg Date	Item #
JI	9/17/09	4
WR	9/17/09	3
TR	9/17/09	3
ETF	9/17/09	4

- Submitted the rule and Legislative Council report to the Department of Administration and Legislative Reference Bureau along with a notice of the scheduled public hearing (July 1, 2009)
- Published the notice of hearing in the Wisconsin Administrative Register (July 15, 2009)
- Held a public hearing (August 13, 2009)

The final draft report on the proposed administrative rule is attached to this memorandum. Minor technical changes to the rule were made in response to comments received in the Legislative Council Staff Clearinghouse Report. The rule now conforms to recommended form and style. There were no appearances at the public hearing and no written comments were received.

Department staff will be available at the meeting to discuss this memorandum and answer any questions you may have regarding the proposed revisions.

Attachment: Final Draft Report on Clearinghouse Rule #09-047

**STATE OF WISCONSIN  
DEPARTMENT OF EMPLOYEE TRUST FUNDS  
EMPLOYEE TRUST FUND BOARD  
WISCONSIN RETIREMENT BOARD  
TEACHERS RETIREMENT BOARD  
GROUP INSURANCE BOARD  
DEFERRED COMPENSATION BOARD**

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**FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #09-048**

**FINAL RULE** to amend ETF 11.15 (4), relating to legal counsel advising the boards that are attached to the department while a board considers a final decision pertaining to an appeal.

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**Agency Person to be Contacted for Questions**

Please direct any questions about the proposed rule to David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 264-6936. E-mail address: [david.nispel@etf.state.wi.us](mailto:david.nispel@etf.state.wi.us).

**Statement Explaining Need for Rule**

This rule-making is needed to improve the procedure for receipt of service of process upon the boards attached to the department by increasing the number of persons who are authorized to accept such service.

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

**1. Statute interpreted:**

Section 40.03, Stats.

**2. Statutory authority:**

Sections 40.03 (2) (i), (ig), (ir) 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:

Ch. ETF 11, Wis. Admin. Code, establishes a procedure for the review of appealable department determinations by the board responsible for the subject matter. There are no other related administrative rules or statutes.

5. Plain language analysis:

The purpose of this rule is to improve the procedure for receipt of service of process upon the boards attached to the department by increasing the number of persons who are authorized to accept such service. The rule eliminates the reference to a chief counsel and changes that position to general counsel, and adds 2 other positions to the list of persons designated to accept service for the board.

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

There are no existing or proposed federal regulations that directly pertain to this proposed rule.

7. Comparison with rules in adjacent states:

The department did not locate any comparable rule or statute in any adjacent states.

8. Summary of factual data and analytical methodologies:

Currently, only three positions are designated by rule to receive service on behalf of the board: the chief counsel of the department and the division administrator or program director administering the program which pertains to the underlying appeal to the board. This rule will improve the procedure for receipt of service of process upon the boards attached to the department by increasing the number of persons who are authorized to accept such service.

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

This rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System.

10. Anticipated costs incurred by private sector

None.

11. Statement of effect on small business:

The rule has no effect on small businesses.

**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. The proposed rule generates no revenues for any employer. The proposed 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 Rule**

ETF 11.15 (4) is amended to read:

ETF 11.15 (4). AGENT FOR SERVICE UPON BOARD. Except as provided in this subsection, no person or employee of the department is authorized to accept service for the board. From time to time the board may by motion designate a person, either by name or position, as agent to accept personal service for the board. Persons holding the following positions, whose names shall be disclosed by the department upon request, are designated as agents to accept personal service on behalf of the board:

- (a) The ~~chief counsel~~ general counsel of the department.
- (b) The division administrator or program director administering the particular program which is the subject matter of the underlying appeal to the board.
- (c) The deputy secretary of the department.
- (d) The secretary of the department or his or her designees.

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FORM 2

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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Ronald Sklansky  
*Clearinghouse Director*

Richard Sweet  
*Clearinghouse Assistant Director*

Terry C. Anderson  
*Legislative Council 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 **09-048**

AN ORDER to amend ETF 11.15 (4), relating to the agent for service of process upon the boards that are attached to the department.

Submitted by **DEPARTMENT OF EMPLOYE TRUST FUNDS**

07-01-2009 RECEIVED BY LEGISLATIVE COUNCIL.

07-27-2009 REPORT SENT TO AGENCY.

RNS:LR



**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



**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

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*Legislative Council Director*

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*Legislative Council Deputy Director*

**CLEARINGHOUSE RULE 09-048**

**Comments**

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

In item 5. of the analysis, “2” should replace “to.”

**Response to Legislative Council Staff Recommendations**

The DETF implemented all of the Legislative Council Staff recommendations contained in the Clearinghouse Report. This involved making changes in clarity, grammar, punctuation, and use of plain language.

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

No persons registered either for or against the rule at the public hearing on August 13, 2009.

**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 13, 2009, 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.**

None.

**Modifications to the Initial Fiscal Estimate**

None.

**Board Authorization for Promulgation**

This final draft report on Clearinghouse Rule #09-048 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, Wisconsin Retirement Board and Teachers Retirement Board at their meetings on September 17, 2009.

**Effective Date**

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

Respectfully submitted,

**DEPARTMENT OF EMPLOYEE TRUST FUNDS**

\_\_\_\_\_  
David A. Stella  
Secretary

Date: \_\_\_\_\_