



STATE OF WISCONSIN
Department of Employee Trust Funds
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CORRESPONDENCE MEMORANDUM

DATE: March 4, 2010

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

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

SUBJECT: Draft Board Policies - Conflict of Interest and Conduct of Board Meetings

The Boards are asked to consider the attached policies for incorporation into the Board Governance Manual.

The Department offers the attached draft policies for the Boards' consideration in accordance with an initiative, announced in September 2009, to periodically present policies to the Boards for the enhancement of the Boards' governance foundation. On December 3, 2009, the Boards approved a communications policy for inclusion in the *Board Governance Manual*.

Conflict of Interest Policy (Attachment 1)

Conflicts of interest can arise when Board members' own employment and personal relationships intersect with their responsibilities as public employee trust fund board members. The attached conflict of interest policy reiterates the legal requirement that one's status as a Board member forbids placing oneself in a position where the Board member's private interests conflict with the fiduciary duty to the fund.

"Conflict of interest" is explained in the attached policy, along with basic requirements for Board members to promptly disclose such conflicts. Board members are to refrain from participation in discussions or votes on issues where the Board member has a personal or financial interest. Continuing conflicts may require resignation from the Board or from the conflicting interest. The Board may decide whether a conflict truly

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

Signature

Date

Board	Mtg Date	Item #
EXC	3.17.10	6A
JL	3.18.10	3E
WR	3.18.10	4B
TR	3.18.10	4B
ETF	3.18.10	5C

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exists and whether a Board member may participate in a discussion, vote or meeting that relates to the issue giving rise to the conflict. Finally, the policy advises that Board members be wary of situations that may be perceived as conflicts of interest.

Conduct of Board Meetings Policy (Attachment 2)

This policy outlines fundamental concepts for the conduct of Board meetings, including the selection of board officers, the frequency of meetings, voting, and how agendas are created and approved. In addition, the policy explains the order of succession for the presiding officer in the event the Chairperson is not present to conduct the meeting. Finally, the policy states that *Robert's Rules of Order* is to be used, unless superseded by any special rules adopted by the Boards.

If the Boards are supportive of these policies as written, or with amendments, they can be formally adopted and included within the *Governance Manual* distributed at the June Board meetings.

I will attend the March 18th meetings to answer any questions you may have.

Attachment: Conflict of Interest Policy (Attachment 1)
 Conduct of Board Meetings Policy (Attachment 2)

Conflict of Interest Policy

Adopted: *[Presented for Board consideration 3/18/2010]*

Last Revised:

A Board member shall not let his or her private interests interfere with the Board member's fiduciary duty to the public employee trust fund.

Conflict of Interest

A conflict of interest can arise when a Board member has a direct or indirect personal or financial interest in a matter that interferes with the Board member's fiduciary duty to the beneficiaries of the public employee trust fund to act in good faith on behalf of the fund and not for the Board member's own interest or for the interest of others.

Disclosure of Actual and Potential Conflicts

All actual and potential conflicts of interest must be promptly disclosed.

A conflict can exist, but the nature of the conflict can be such that, in the Board member's estimation, the conflict does not interfere with the Board member's fiduciary duty and would not require disclosure, recusal or other measures. However, it is the Boards' policy that proactive disclosure of all potential conflicts will support and promote the welfare of the public employee trust fund. Therefore, a Board member shall promptly disclose to the Board chairperson any personal or outside interest, relationship or responsibility (financial, professional or otherwise) held by the Board member regarding any matter that is or will be presented for the Board's discussion or consideration. The Board chairperson will obtain advice from the Board's legal counsel regarding the potential conflict.

All Board members have a duty to promptly report any actual or potential conflict of interest of which the Board member becomes aware, whether such conflict resides with the Board member or with another Board member.

If the Board chairperson has an actual or potential conflict of interest, the chairperson shall promptly disclose the matter to the Secretary of the Department of Employee Trust Funds. The Secretary will obtain advice from the Board's legal counsel regarding the potential conflict.

All disclosures shall be made in writing and as soon as possible after the conflict is known to the Board member.

Recusal

Any Board member with an interest, relationship or responsibility that conflicts with the Board member's fiduciary responsibility to the public employee trust fund shall recuse himself or herself from any discussions, negotiations, appeal hearings and any votes on the issue that gave rise to the conflict and, if necessary, from the Board meeting, or applicable part thereof.

Resignation

If a Board member fails to disclose a substantial conflict of interest, or has a significant continuing and irreconcilable conflict of interest that impedes the Board member's ability to carry out his or her fiduciary responsibility to the public employee trust fund, resignation from the Board or from the conflicting interest may be required by Board action.

Board Action

For any potential conflict, the Board, with the abstention of the interested Board member, may decide whether a conflict of interest exists and whether such Board member may participate in any discussion or vote on the issue that gave rise to the potential conflict. No such decision is necessary in the event that the Board member has already recused himself or herself from the discussions and vote on each issue that gave rise to the conflict.

Avoiding the Appearance of a Conflict of Interest

Board members should be mindful not to put themselves into situations that can be perceived by others as a conflict of interest. Even the perception of a conflict of interest can erode the public's confidence in specific Board decisions.

Selected Statutory References

Wis. Stat. § 40.01 (3) COMPATIBILITY OF TRUSTEE RESPONSIBILITIES.

Membership on the employee trust funds board, group insurance board, deferred compensation board, Wisconsin retirement board and the teachers retirement board shall not be incompatible with any other public office. The board members and the employees of the department shall not be deemed to have a conflict of interest in carrying out their responsibilities and duties in administering this chapter, or taking other appropriate actions necessary to achieve the purposes of this chapter, solely by reason of their being eligible for benefits under the benefit plans provided under this chapter. However, any board member or employee of the department is expressly prohibited from participating in decisions directly related to a specific benefit, credit, claim or application of the person and from participating in negotiations or decisions on the selection of actuarial, medical, legal, insurance or other independent contractors if the board member or employee of the department has a direct or indirect financial interest in or is an officer or employee or is otherwise associated with the independent contractor.

Wis. Stat. § 19.46 Conflict of interest prohibited; exception. (1)

Except in accordance with the board's advice under s. 5.05(6a) and except as otherwise provided in sub. (3), no state public official may:

- (a) Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
- (b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the

official's immediate family either separately or together, or an organization with which the official is associated.

Wis. Stat. § 946.13 Private interest in public contract prohibited

(1) Any public officer or public employee who does any of the following is guilty of a Class I felony:

(a) In the officer's or employee's private capacity, negotiates or bids for or enters into a contract in which the officer or employee has a private pecuniary interest, direct or indirect, if at the same time the officer or employee is authorized or required by law to participate in the officer's or employee's capacity as such officer or employee in the making of that contract or to perform in regard to that contract some official function requiring the exercise of discretion on the officer's or employee's part; or

(b) In the officer's or employee's capacity as such officer or employee, participates in the making of a contract in which the officer or employee has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on the officer's or employee's part.

Conduct of Board Meetings Policy

Adopted: [Presented for Board Consideration 3/18/2010]

Last Revised:

Selection of Board Officers: Chairperson, Vice Chairperson and Secretary

Wis. Stat. § 15.07 (2) provides that the chairperson, vice chairperson, and the secretary of the Employee Trust Funds Board, Teachers Retirement Board, and the Wisconsin Retirement Board must be elected in the respective Board's first meeting each year. Those having held office are eligible to be re-elected for successive terms.

Frequency of Meetings

Wis. Stat. § 15.07 (3) (a) requires that Employee Trust Funds Board meet quarterly. Wis. Stat. § 15.07 (3) (b) requires that the Teachers Retirement and Wisconsin Retirement Boards meet at least once per year. Boards may meet at other times on the call of the chairperson or a majority of its members.

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 (excluding vacant seats) constitutes a quorum. 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 impractical, the Open Meetings Law permits two hours notice. Sundays and legal holidays are disregarded in calculating the twenty-four hour notice.

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) – (i) (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

- A. If present, the chairperson presides.
- B. If the chairperson is absent, the vice chairperson presides.
- C. If the chairperson and vice chairperson are absent, the secretary presides.
- D. 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 Department Board Liaison.

Committees

- A. Upon adoption of a motion to establish a 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, vice chair, and secretary.
- B. Committees shall have a minimum of three and a maximum of five members.
- C. The Board chair shall promptly fill vacancies on committees.
- D. Committees shall meet on the call of the committee chairperson or a majority of the committee's members. A majority of the committee's members shall constitute a quorum. Any motion before a committee may be passed by a majority vote of a quorum of the committee.
- E. A committee may only act within the scope of the committee charter adopted by the Board.
- F. 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. Minutes of committee meetings shall be taken and distributed to all Board members.
- G. Any Board member may attend any committee meeting, although only committee members may be counted for quorum or voting purposes.
- H. 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 Session

Sample statement for entering into closed session:

"The Board will convene in closed session pursuant to the exemptions contained in section 19.85 (1) (e) of the Wisconsin statutes, for the purpose of deliberations on Appeal No. 2010-000-XXX. Assistant Attorney General _____, staff from the Office of State Employment Relations and the Board Liaisons are invited to remain during the closed session."

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.
- (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 government accountability Board under s. 5.05 (6a), or from any county or municipal ethics Board under s. 19.59 (5).
- (i) Considering any and all matters related to acts by businesses under s. 560.15 which, if discussed in public, could adversely affect the business, its employees or former employees.