



STATE OF WISCONSIN
Department of Employee Trust Funds

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CORRESPONDENCE MEMORANDUM

DATE: November 2, 2010
TO: Employee Trust Funds Board
Teachers Retirement Board
FROM: Steve Hurley, Director
Office of Policy, Privacy and Compliance
SUBJECT: Early Draft of Proposed Administrative Rule for ETF and TR Board Elections

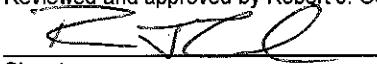
This memo is for informational purposes only. No Board action is required. However, any feedback from the Boards on the proposed rule would be appreciated.

The Department and the Boards have agreed that the normal process for proposed administrative rules is for the Department to present the final draft report to the Boards *after* the proposed rule has been reviewed by the Legislative Council Rules Clearinghouse. However, the attached proposed rule (Attachment 1) has not been sent to the Legislative Council Rules Clearinghouse. We are presenting this material now because it relates to Board elections and we would, therefore, appreciate input from Board members to guide the development of this early draft rule. If feedback on the concept of changing the current rule is favorable, Board members will have another opportunity for comment when the Department presents the proposed rule in final draft report form for the Boards' approval.

Background

Wis. Admin. Code § ETF 10.10 governs elections to the Employee Trust Funds (ETF) Board and the Teachers Retirement (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.

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

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

Signature _____ Date 11/10/10

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TR	12.2.10	3A
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costs related to traditional paper ballot elections, such as postage and 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.

As we reviewed the current rule, it became apparent other parts of the elections rule needed improvement. Other changes to the current administrative rule include the addition of headers, edits for improved readability, and re-sequencing the subsections into a more logical order. The most significant changes are listed in the table below:

Current Rule	Proposed Rule
Elections can only be conducted using paper ballots.	Elections may be conducted electronically, using paper or any other form chosen by the Department Secretary.
Nomination petitions must contain the Social Security Number of each signer.	There is no requirement for the Social Security Number of each signer of the Nominating Petition form.
An election committee must be appointed and convened, even when the number of candidates whose nomination papers are approved is equal to or less than the number of positions to be filled in an election category.	No election committee need be appointed or convened in the event the number of candidates whose nomination papers are approved is equal to or less than the number of positions to be filled in an election category. The Department declares candidates as elected.
A candidate can request a recount within 30 days of the date the candidates are notified of the election results. There is no explicit limit on the number of recounts that can be requested.	A candidate may request <u>one</u> recount per election, within 10 business days of notification of election results.
Notices for prospective candidates must be distributed via newsletter.	The Secretary can determine the best way to provide election notices to prospective candidates.

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

Attachment 1: Proposed ETF Administrative Rules for ETF and TR Board Elections (ETF 10.10)

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

Text of Current Rule	Proposed Rule	Comments
<p>ETF 10.10 Employee trust funds board and teachers retirement board elections. (1) The purpose of this section is to set forth procedures for all elections of participating employees and annuitants 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, the procedures established in this section shall apply for elections to either the employee trust funds board or the teachers retirement board.</p>	<p>ETF 10.10 Employee trust funds board and teachers retirement board elections. (1) The purpose of this <u>PURPOSE. This</u> section is to set forth <u>establishes</u> procedures for all elections of participating employees and annuitants <u>persons</u> 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 <u>se</u> procedures established in this section shall apply for elections to either the employee trust funds board or the teachers retirement board.</p>	Added header and amendments for clarity.
<p>(1m) In this section:</p> <p>(a) “Annuitant” has the meaning given in s. 40.02 (4), Stats.</p> <p>(b) “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.</p> <p>(c) “Participating employee” has the meaning given in s. 40.02 (46), Stats.</p> <p>(d) “Teacher” has the meaning given in s. 40.02 (55), Stats.</p>	<p>(1m) <u>DEFINITIONS.</u> In this section:</p> <p>(a) “Annuitant” has the meaning given in s. 40.02 (4), Stats.</p> <p>(b) “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.</p> <p>(c) “Participating employee” has the meaning given in s. 40.02 (46), Stats.</p> <p>(d) “Teacher” has the meaning given in s. 40.02 (55), Stats.</p>	Added header.
<p>(2) 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 is vacated due to resignation, death or for any other reason. When a term is due to expire, the secretary shall schedule the election to assure that the election is completed and the new board member announced prior to the date the new term commences. 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.</p>	<p>(2) <u>SCHEDULING OF ELECTIONS.</u> 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.</p> <p><u>(a) Regular elections.</u> When a term is due to expire, the secretary shall schedule the election to as <u>ensure</u> that the election is completed and the new board member announced prior to the date the new term commences.</p> <p><u>(b) Vacancies.</u> 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.</p>	Added header. Changed format to break text out into paragraphs (a) and (b).

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

Text of Current Rule	Proposed Rule	Comments
<p>(3) Annuitants or participating employees shall be eligible to vote if they are an annuitant or participating employee in the election category for which the election is being held and meet the other voting eligibility requirements set forth in this section at the time ballots are printed for distribution to employers or annuitants and the department has record of their eligibility.</p>	<p>(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.</p>	<p>New subsection permits flexibility in sending out notices.</p> <p>Retained current (3) text, with amendments, in new subsection (7) ELIGIBILITY TO VOTE.</p>
<p>(4) For a teacher employed in more than one employment location within an election category specified under s. 15.165 (3) (a) 1. or 2., Stats., the department shall send a ballot to only one location as determined by the department. For a teacher concurrently employed by both a public school and a technical college system district, the department shall send a ballot to both locations, and the teacher shall be eligible to vote in both categories specified under s. 15.165 (3) (a) 1. and 2., Stats.</p>	<p>(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:</p> <p>(a) <i>Submit a nominating petition.</i> 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.</p> <p>(b) <i>Certify the nominating petition.</i> Sign the nomination petition to certify that all signers are eligible to vote in the election category for which the candidate is running.</p>	<p>Retained current subsection (4) text with amendments in new subsection (8) VOTING.</p> <p>For privacy purposes, removed requirement for participants' Social Security Numbers on the nominating petition.</p>

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

Text of Current Rule	Proposed Rule	Comments
	<p><i>(c) Submit a candidate statement. Submit a candidate information form to the department containing no more than 100 words. The department shall print no more than the first 100 words of the candidate's information and send it to eligible voters with the ballots. The candidate must sign the candidate information form verifying the accuracy and truthfulness of the information provided.</i></p> <p><i>Note: A nominating petition form (ET-8868) and Candidate Information form (ET-8869) can be obtained from the department by contacting the department's board liaison at 877-533-5020.</i></p>	
<p>No subsection (5) text in current rule. (The original version of the rule, as promulgated in April 1984, contained a subsection (5) that permitted inactive teachers to vote based on their last covered employment. This subsection was repealed in February 1985).</p>	<p>(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.</p>	
<p>(6) 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.</p>	<p>(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.</p>	<p>Subsection (6) retained, with added subheading, in new subsection (7) ELIGIBILITY TO VOTE, as paragraph (7) (b).</p>

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

Text of Current Rule	Proposed Rule	Comments
<p>(7) Any participating employee or annuitant satisfying the eligibility requirements of s. 15.165 (3) (a) 1., 2., 6. or 7., Stats., on the date he or she files nomination papers with the department and who plans to continue meeting the eligibility requirements when assuming office, if elected, may be nominated for election to the teachers retirement board or any annuitant meeting the eligibility requirements of s. 15.16 (1) (d), Stats., or any participating employee meeting the eligibility requirements of s. 15.16 (1) (f), Stats., on the date he or she files nomination papers with the department and who plans to continue meeting the eligibility requirements when assuming office, if elected, may be nominated for election to the employee trust funds board by satisfying the requirements of pars. (a) to (c) within the calendar dates established by the department. The department shall publish notice of the election, the nomination timetable and instructions for prospective candidates in the department's newsletter. Prospective candidates may obtain nomination petition forms from the department. A candidate shall do all of the following:</p> <p>(a) Submit to the department a nominating petition, which shall contain at least 25 but no more than 50 valid signatures of participating employees or annuitants eligible to vote in that election, indicating the name and address of the signer's employer, the signer's social security number 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, if the candidate is seeking election to the employee trust funds board, or the signer's last public school or technical college system school employer, if the candidate is seeking election to the teachers retirement board. 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.</p>	<p>(7) ELIGIBILITY TO VOTE.</p> <p>(a) <i>General requirements.</i> 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 prepared for distribution.</p> <p>(b) <i>Teachers retirement board elections.</i> 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.</p>	<p>Current subsection (7) text retained with amendments in new subsection (4) NOMINATION PROCEDURES.</p> <p>The basic nomination eligibility requirements in the current (7) for ETF Board and TR Board are broken out in new subsections (5) and (6)</p> <p>The language on notice of election timeline and instructions for candidates was moved to new subsection (3) CALL FOR NOMINATIONS.</p>

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

Text of Current Rule	Proposed Rule	Comments
<p>(b) Certify that the signers are, to the best of the candidate's knowledge, eligible to vote in the election category for which the candidate is running.</p> <p>(c) Submit to the department biographical or other information containing no more than 100 words. The department shall print no more than the first 100 words of the candidate's information and send it to eligible voters with the ballots.</p>		
<p>(8) The department shall print ballots with the candidates' names in alphabetical order and shall include, when the ballots are distributed, instructions for marking the ballot and the deadline for its return. For elections in which participating employees may vote, the department shall send each employer one ballot individually labeled with the participating employee's name for each participating employee in the election category for which the election is being held who is employed by the employer and whose position is known to the department. A distribution list, prepared by the department and containing the names of participating employees for whom ballots are included, shall accompany the ballots. The department shall require employers to verify, by signing the distribution list that the employer distributed the ballots within 30 days of the date they were mailed by the department. The employer shall indicate on the distribution list which ballots could not be distributed and shall return the undistributed ballots. For annuitant elections, the department shall send a ballot directly to each annuitant who is eligible to vote in that election at the last home address the department has on file.</p>	<p>(8) <u>DISTRIBUTION PROCEDURES FOR PAPER BALLOTS. This subsection shall only apply to elections that are conducted using paper ballots. If an election is conducted using a combination of electronic and paper means, this subsection shall apply to the paper ballots used in that election.</u> The department shall print ballots with the candidates' names in alphabetical order and shall include, when the ballots are distributed, instructions for marking the ballot and the deadline for its return. For elections in which participating employees may vote, the department shall send each employer one ballot individually labeled with the participating employee's name for each participating employee in the election category for which the election is being held who is employed by the employer and whose position is known to the department. A distribution list, prepared by the department and containing the names of participating employees for whom ballots are included, shall accompany the ballots. The department shall require employers to verify, by signing the distribution list, that the employer distributed the ballots within 30 days of the date they were mailed by the department. The employer shall indicate on the distribution list which ballots could not be distributed and shall return the undistributed ballots. For annuitant elections, the department shall send a ballot directly to each annuitant who is eligible to vote in that election at the last home address the department has on file.</p>	<p>Amended to apply to only to paper balloting due to incompatibility with electronic voting process.</p>

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

Text of Current Rule	Proposed Rule	Comments
<p>(9) All voters shall certify their eligibility to vote in the appropriate election category by signing the ballot and returning it in an envelope.</p>	<p>(9) VOTING. The secretary may conduct the election by any appropriate means, including paper ballots, electronic ballots, or a combination of such methods. 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.</p> <p>(a) <i>Teacher with multiple employment locations.</i> Depending on the method of balloting selected by the secretary, for a teacher employed in more than one employment location within an election category specified under s. 15.165 (3) (a) 1. or 2., Stats., the department shall provide a ballot to only one location as determined by the department.</p> <p>(b) <i>Teacher in public school and a technical college system district.</i> Depending on the method of balloting selected by the secretary, for a teacher concurrently employed by both a public school and a technical college system district, the department shall provide a ballot to both locations, and the teacher shall be eligible to vote in both categories specified under s. 15.165 (3) (a) 1. and 2., Stats.</p> <p>(c) <i>Voting when there are multiple teachers retirement board positions to be filled.</i> 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.</p>	

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

Text of Current Rule	Proposed Rule	Comments
<p>(10) 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 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.</p>	<p>(10) <u>CERTIFICATION OF ELECTION RESULTS.</u> <u>If an election is held, the respective</u> 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 <u>who are</u> 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.</p>	<p>Amended to refer generally to Boards, rather than the repetitive language used in the current version.</p>
<p>(11) 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 any of the following apply: (a) The signature is not the same as the name on the ballot. (b) The ballot is not signed. (c) Too many candidates have been voted for on the ballot. (d) A ballot is so defective that the committee cannot determine with reasonable certainty for whom the ballot was cast. (e) The ballot contains the name of a write-in candidate.</p>	<p>(11) <u>VERIFICATION OF ELECTION RESULTS.</u> The department shall review each ballot by checking the signature against the name on the ballot. The department shall set aside <u>ballots/votes</u> that it believes may be invalid under pars. (a) to (d) <u>(eh)</u> for review by the election committee. 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. (c) Too many candidates have been voted for on the ballot. (d) A ballot is so defective that the committee cannot determine with reasonable certainty for whom the ballot was cast. (e) The ballot contains the name of a write-in candidate. <u>(f) The ballot was submitted by an ineligible voter.</u> <u>(g) The ballot was not received within the period prescribed by the election notice.</u> <u>(h) Electronic votes were cast in a manner not prescribed by the secretary.</u></p>	<p>Amended to remove general references to review of signatures on physical ballots and to add categories where a vote is considered invalid, such as submission of a ballot by an ineligible voter, ballots received late, and electronic votes that contain discrepancies.</p>

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

Text of Current Rule	Proposed Rule	Comments
<p>(12) If the number of candidates who file nomination papers is equal to or less than the number of positions to be filled within an election category, the department shall not schedule an election and the election committee shall declare all candidates to be elected.</p>	<p>(12) <u>INSUFFICIENT NUMBER OF CANDIDATES FOR HOLDING AN ELECTION.</u> If the number of candidates who file<u>whose nomination papers-petitions are approved by the department</u> is equal to or less than the number of positions to be filled within an election category, <u>all of the following shall apply:</u></p> <p><u>(a) the department shall not schedule an election;</u> <u>(b) the election committee shall not be appointed or convened;</u> and <u>(c) the election committee-department shall declare all candidates to be <u>as</u> elected.</u></p>	<p>Amended for clarity.</p> <p>Added paragraphs (a), (b) and (c), requiring that the election committee need not be appointed or convened when there are insufficient number of candidates for conducting an election.</p>
<p>(13) 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.</p>	<p>(13) <u>TABULATION OF VOTES.</u> 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.</p>	<p>Retained current subsection (13) text in new subsection (8) (c) VOTING.</p>
<p>No subsection (14) text in current rule.</p>	<p>(14) <u>NOTIFICATION OF ELECTION RESULTS.</u> For elections scheduled because a term is due to expire, the department shall notify all candidates of the results 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 of the results of the election within 15 days of the close of the election.</p>	
<p>(15) 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 his or her designee.</p>	<p>(15) <u>RECOUNT OF RESULTS.</u> 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.</p>	<p>Retained current subsection (15) text as new subsection (13) TABULATION OF VOTES</p>

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

Text of Current Rule	Proposed Rule	Comments
<p>(16) For elections scheduled because a term is due to expire, the department shall notify all candidates of the results 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 of the results of the election within 15 days of the close of the election.</p>	<p>No subsection (16) in proposed rule.</p>	<p>Retained current subsection (16) text as new subsection (14) NOTIFICATION OF ELECTION RESULTS and amended to cover notifications under new Subsection (11), when there are an insufficient number of candidates to hold an election.</p>
<p>(17) The department shall retain nominating petitions and ballots for 45 days from the date the candidates are notified in sub. (16). 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.</p>	<p>No subsection (17) in proposed rule.</p>	<p>Subsection (17) is repealed because a current Records Retention/Disposition Authorization (RDA) has exists, requiring these materials to be sent to the State Records Center and retained for one year after the election is completed.</p> <p>Recount language is retained with amendments in new subsection (15).</p>