



**STATE OF WISCONSIN**  
**Department of Employee Trust Funds**  
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 SECRETARY

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**CORRESPONDENCE MEMORANDUM**

**DATE:** January 9, 2008

**TO:** Group Insurance Board

**FROM:** David H. Nispel  
 Deputy Chief Legal Counsel

**SUBJECT:** Approval of Scope Statement Regarding Proposed Amendment to Wis. Admin. Code s. ETF 11.11

**The Board is asked to approve the attached scope statement.**

The Department of Employee Trust Funds (Department) proposes to modify Wis. Admin. Code s. ETF 11.11, relating to the appointment of legal counsel to advise the boards attached to the Department while the boards consider a final decision pertaining to an appeal. Approval of the scope statement is the first step in promulgating an administrative rule. The final version of the proposed rule will be submitted to the boards in the spring of 2008.

The proposed amendment covered by the scope statement concerns appointment of legal counsel by the Employee Trust Funds Board, Wisconsin Retirement Board, Teachers Retirement Board, Group Insurance Board, and the Deferred Compensation Board. The amendment also relates to the nature of the legal representation provided to those boards during their consideration of a final decision pertaining to a pending appeal.

Currently, board staff arranges for legal counsel to advise the boards from one of three sources: 1) the Department of Justice, if the Department is a party to the appeal; 2) the Department's chief counsel, if the Department is not a party to the appeal; and 3) outside counsel, if neither the Department's chief counsel nor the Department of Justice is able to provide legal counsel. The current rule also prescribes a number of specific duties of the legal counsel.

The proposed amendment was prompted by the need to provide the boards with additional flexibility in the use of legal counsel. Under the proposed amendment covered by the scope statement, board staff may arrange for legal counsel for the boards as deemed necessary and in accordance with the statutory responsibilities of the Department of Justice to provide legal counsel. In addition, the proposed amendment would eliminate the itemized duties of the legal counsel contained in the current rule and simply provide that the legal counsel shall provide legal representation to the board.

The scope statement was modified to reflect the concerns expressed at the November board meeting regarding the statutory responsibilities of the Department of Justice under Wis. Stat. s. 40.03 (3). The retirement boards approved this scope statement in December 2007.

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

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