

Statement of Scope of Proposed Rule Department of Employee Trust Funds

The Department of Employee Trust Funds (department) gives notice pursuant to Wis. Stat. s. 227.135, that it proposes to modify an existing administrative rule, specifically Wis. Admin. Code s. ETF 11.11. The rule relates to legal counsel advising the boards that are attached to the department while a board considers a final decision pertaining to an appeal.

DESCRIPTION OF RULE

The proposed modifications concern appointment of legal counsel by the Employee Trust Funds Board, Wisconsin Retirement Board, Teachers Retirement Board, Group Insurance Board, and the Deferred Compensation Board and the nature of the legal representation provided to those boards during their consideration of a final decision pertaining to a pending appeal. The proposed rule does not change the responsibility of the Department of Justice to provide legal counsel pursuant to Wis. Stat. s. 40.03 (3).

POLICY ANALYSIS

Under current law (Wis. Stat. s. 40.03 (3)), the Department of Justice is required to furnish legal counsel and prosecute and defend all actions brought by or against the Employee Trust Funds Board, the Group Insurance Board, the department, or any employee of the department as a result of the performance of the department employee's duties. Under the current administrative rules, board staff arrange for legal counsel to advise the Employee Trust Funds Board, Wisconsin Retirement Board, Teachers Retirement Board, Group Insurance Board, and the Deferred Compensation Board 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.

Under the proposed modifications, board staff may arrange for legal counsel for the boards as deemed necessary and in accordance with Wis. Stat. s. 40.03 (3). In addition, the proposed modifications will eliminate the specific 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 proposed modifications will provide the boards with additional flexibility in the use of legal counsel.

STATUTORY AUTHORITY

Wis. Stat. ss. 40.03 (2) (i) and 227.11 (2) (a) provide the authority for the proposed rule.

ESTIMATE OF AGENCY STAFF TIME TO DEVELOP RULE:

The Department estimates that state employees will spend 40 hours to develop this rule.

ENTITIES LIKELY TO BE AFFECTED BY THE PROPOSED RULE

The proposed modifications would affect the various boards attached to the department, the department itself, and the Department of Justice.

SUMMARY OF AND COMPARISON TO FEDERAL REGULATIONS

No specific federal regulation is implicated by this rulemaking. There is no impact on the provisions of the Internal Revenue Code regulating qualified pension plans. Similarly, there is no impact on Wis. Stat. s. 40.015, which requires that the Wisconsin Retirement System be maintained as a qualified plan.

I have reviewed this Statement of Scope and approve it for publication in the Administrative Register this _____ day of _____, 200__.

David A. Stella, Secretary
Department of Employee Trust Funds