



STATE OF WISCONSIN
Department of Employee Trust Funds
Robert J. Conlin
SECRETARY

801 W Badger Road
PO Box 7931
Madison WI 53707-7931
1-877-533-5020 (toll free)
Fax (608) 267-4549
http://etf.wi.gov

CORRESPONDENCE MEMORANDUM

DATE: November 15, 2012
TO: Employee Trust Funds Board
Teachers Retirement Board
Wisconsin Retirement Board
FROM: David H. Nispel, General Counsel
Steve Hurley, Office of Policy, Privacy and Compliance
SUBJECT: Status of Proposed Administrative Rules

This memo is for informational purposes only. No Board action is required.

This memorandum is designed to show rules that staff are working on and the status of those rules. When rules are in final draft form, they are brought to the Boards for approval. In some instances, rules will need to be approved by all three Boards. In other instances, only one or two Boards will need to approve the rule.

We have added a new section to this memorandum that will provide updates on the administrative rule process. In 2011 and 2012, legislation was enacted and executive orders were issued that significantly changed the process. This new section, which will appear as the final section of each edition of the memorandum, will feature one or more of the changes to the rule making process. This particular memorandum will provide an overview of those changes and highlight the most recent change involving the Economic Impact Analysis.

As of November 15, 2012, there are four rules which can be divided into the following categories:

- Employee Trust Funds (ETF), Wisconsin Retirement (WR), and Teachers Retirement (TR) Boards 1
ETF Board and TR Board..... 1
ETF Board Only..... 1
WR Board Only..... 1

Table with 3 columns: Board, Mtg Date, Item #. Row 1: JI, 12.6.12, 4E

Reviewed and approved by Robert J. Conlin, Secretary
[Signature] 11/19/12
Signature Date

I. Rules to be Approved by ETF, WR, and TR Boards

Status: Economic Impact Analysis Posted on ETF's Website, Wisconsin Administrative Rules Website and Filed with Governor's Office of Regulatory Compliance

- SS 059-12, Technical rule relating to making technical updates to existing ETF rules and making other minor substantive changes.

II. Rules Approved by ETF and TR Boards (June 21, 2012)

Status: Will be Submitted for Legislative Review in January 2013

- CR 12-020, Election rule relating to changes to streamline the administrative process for the election of persons to the Teachers Retirement Board and Employee Trust Funds Board and to allow for the use of modern voting technologies.

III. Rules to be Approved Only by ETF Board

Status: Because most sections of the rule originally drafted related to procedures and can be implemented without going through the rule making process, the rule originally drafted regarding IRC compliance is being replaced by a new one that solely focuses on matters that must be addressed by administrative rule. The Statement of Scope for the new rule was published in the Wisconsin Administrative Register on October 31, 2012. ETF staff are drafting the rule at this time.

- SS 079-12, ETF seeks to clarify how the Department administers provisions of the Internal Revenue Code (IRC), including § 415 (c) as provided in § 40.03 (2) (t), Stats., to ensure compliance with federal law.

IV. Rules to be Approved Only by WR Board

Status: Statement of Scope Published in Wisconsin Administrative Register – ETF Staff Drafting Rule

- Duty disability rule relating to clarifying the existing rule regarding the administration of the duty disability program and streamlining the process of applying for and making a departmental determination regarding duty disability benefits.

V. Updates on Administrative Rule Process

General Information

2011 Wisconsin Act 21 and 2011 Wisconsin Act 32 made major changes to the administrative rule making process. Those changes relate to agency rule making authority, approval of scope statements and final draft rules by the Governor, treatment of emergency rules, preparation of economic impact analyses, referral of rules to the Joint Committee for Review of Administrative Rules (JCRAR), and detailed rule promulgation instructions to agencies.

Executive Order #50 (Guidelines for Promulgation of Administrative Rules) sets forth additional requirements and provides rule promulgation instructions to agencies. The Order also establishes an Office of Regulatory Compliance in the Governor's office.

Economic Impact Analysis

The new rulemaking process requires an economic impact analysis (EIA) for every proposed rule prior to being submitted to the Rules Clearinghouse for review. This requirement does not apply to emergency rules. The numerous requirements of the EIA are set forth in 2011 Wisconsin Acts 21 and 32 and the Governor's Executive Order #50. Below is a brief overview of what is required.

The analysis must include information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole. In preparing the analysis, the agency must solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the proposed rule and must prepare the analysis in coordination with local governmental units that may be affected by the proposed rule. The solicitation of information and advice can be conducted by posting the draft rule on the agency's website and the state's administrative rule website and providing a comment period.

After soliciting information and advice from the affected parties, the agency prepares the EIA. The analysis must include all of the following:

1. An analysis and quantification of the policy problem that the proposed rule is intended to address, including comparisons with the approaches used by the federal government and by neighboring states to address that policy problem and, if the approach chosen by the agency to address that policy problem is different from those approaches, a statement as to why the agency chose a different approach.
2. An analysis and detailed quantification of the economic impact of the proposed rule, including the implementation and compliance costs that are reasonably expected to be incurred by or passed along to the businesses, local governmental units, and individuals that may be affected by the proposed rule.

3. An analysis of the actual and quantifiable benefits of the proposed rule, including an assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.
4. An analysis of alternatives to the proposed rule, including the alternative of not promulgating the proposed rule.
5. A determination made in consultation with the businesses, local governmental units, and individuals that may be affected by the proposed rule as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state.

When the agency submits the economic impact analysis to the Rules Clearinghouse, the agency must also submit the analysis to the Department of Administration (DOA), to the Governor, and to the Chief Clerks of each house of the Legislature for further distribution within the Legislature.

On November 7, 2012, the EIA for the ETF's 2012 technical rule was posted on its website where it will remain for a period of 14 days pursuant to the Governor's Executive Order # 50.

Staff will be available at the December 6, 2012, Board meeting to answer questions.