



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:** February 8, 2013  
**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

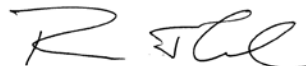
**This memo is for informational purposes only. No Board action is required.**

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 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 changes involving an agency's authority to promulgate rules and implement standards.

As of February 8, 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

Reviewed and approved by Robert J. Conlin, Secretary  
  
Electronically Signed 2/14/13

Board	Mtg Date	Item #
JL	3.7.13	5E

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

**Status: Proposed rule submitted to the Wisconsin Legislative Council Rules Clearinghouse on December 17, 2012. Response received from Clearinghouse on January 17, 2013. Public hearing held on January 31, 2013. No testimony or written comments received. Final rule ready for Board approvals.**

- CR 12-054, Technical rule relating to making technical updates to existing ETF rules and making other minor substantive changes, including allowing employers more flexibility in the deadlines for submitting monthly reports to ETF and changing an existing rule regarding local public employers health insurance to comply with 2011 Wisconsin Act 133.

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

**Status: Submitted for Legislative Review in December 2012. Referred to Senate Committee on Judiciary and Labor on January 11, 2013. Referred to Assembly Committee on Government Operations and State Licensing on January 22, 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: Scope Statement approved by the Governor on October 2, 2012, and published in the Administrative Register on October 31, 2012. Proposed rule submitted to the Wisconsin Legislative Council Rules Clearinghouse on January 10, 2013. Response received from Clearinghouse on February 6, 2013. Public hearing scheduled for February 13, 2013.**

- CR 13-004, Internal Revenue Code (IRC) compliance rule relating to clarifying how ETF administers provisions of the IRC, including §§ 415 (b), 415 (c) and 401 (a) (17) as provided in § 40.03 (2) (t), Wis. Stats.

#### **IV. Rules to be Approved Only by WR Board**

**Status: Statement of Scope published in Wisconsin Administrative Register on June 17, 2010. 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**

##### **Generally**

Major changes to the administrative rule making process were made by 2011 Wisconsin Act 21 and 2011 Wisconsin Act 32. Those changes relate to agency rule making authority, approval by the Governor of scope statements and final draft rules, 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.

##### **Agency's Authority to Promulgate Rules and Implement Standards**

2011 Wisconsin Act 21 provides that all of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

- A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rulemaking authority on the agency or augment the agency's rulemaking authority beyond the rulemaking authority that is explicitly conferred on the agency by the legislature.
- A statutory provision describing the agency's general powers or duties does not confer rulemaking authority on the agency or augment the agency's rulemaking authority beyond the rulemaking authority that is explicitly conferred on the agency by the legislature.
- A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

Status of Proposed Administrative Rules

February 8, 2013

Page 4

In addition, the Act provides that no agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by rule.

Staff will be available at the March 7, 2013, Board meeting to answer questions.