



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: May 24, 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 lists administrative rules staff are working on and the status of those rules. Once a rule is in final draft form, it is 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 continue to provide a section in this memorandum with 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 appears as the final section of each edition of the memorandum, features one or more of the changes to the rule making process. This particular memorandum highlights the changes involving gubernatorial approval of final drafts of proposed rules and legislative review of proposed rules.

As of May 24, 2013, there are four rules pending, 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. Marchant, Deputy Secretary

Electronically Signed 5/31/13

Board	Mtg Date	Item #
JM	6.20.13	4C

I. Rule Approved by ETF, WR, and TR Boards (March 7, 2013)

CR 12-054, Technical rule relating to making technical updates on 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.

- **Status:** The proposed rule was approved by the Group Insurance Board on May 21, 2013. The next step is approval by the Governor before it is sent to the Legislature for review.

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

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.

- **Status:** The rule is scheduled for publication in the May 31, 2013, Wisconsin Administrative Register and will be effective June 1, 2013.

III. Rule Approved Only by ETF Board (March 7, 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.

- **Status:** The Governor approved the rule on March 25, 2013. The rule was submitted to the Legislature for consideration on April 1, 2013. It is currently under passive review by the Joint Committee for Review of Administrative Rules (JCRAR). The JCRAR review period expires June 7, 2013.

IV. Rule to be Approved Only by WR Board

CR 13-029, 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.

- **Status:** Comments on the final draft report were received from the Legislative Council Rules Clearinghouse on May 10, 2013. ETF held a public hearing on May 15, 2013. It is scheduled to be presented to the Wisconsin Retirement Board on June 20, 2013.

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.

Gubernatorial Approval of Final Drafts of Proposed Rules

Under Act 21, agencies must submit a proposed rule that is in final draft form to the Governor for approval. The Governor may approve or reject the proposed rule, and, if the Governor approves a proposed rule, he or she must provide the agency with a written notice of that approval. A proposed rule may not be submitted to the Legislature for review unless the Governor has approved the proposed rule in writing.

Legislative Review of Proposed Rules

Act 21 provides that a notice of a proposed rule that is received by the Legislature for committee review after the last day of the Legislature's final general-business floorperiod in the biennial session will be considered received on the first day of the next regular session of the Legislature, unless the presiding officers of both houses refer the notice and report for committee review before that day. If such a referral is made, the committee review period for each committee extends to the day that the next Legislature convenes.

In addition, Act 21 provides that when a committee's jurisdiction over a proposed rule is concluded, the committee must report the proposed rule and any objection to the Joint Committee for Review of Administrative Rules (JCRAR). The review period for JCRAR is 30 days, unless extended by action of the JCRAR Co-Chairs, after the last referral of a proposed rule and any objection to JCRAR. During that review period, JCRAR may take any action on the proposed rule in whole or in part. JCRAR must meet and take action during that period with respect to any proposed rule or any part of a proposed rule to which a committee has objected and may meet and take action during that period with respect to any proposed rule or any part of a proposed rule to which no committee has objected.

However, if a notice and report is received by the Legislature after the last day of the Legislature's final general-business floorperiod and is referred for committee review before the first day of the next regular session of the Legislature, Act 21 provides that the review period for JCRAR extends to the day that the next Legislature convenes. During that review period, JCRAR may meet and take action on the proposed rule in whole or in part. If JCRAR meets in executive session with respect to a proposed rule or part of a proposed rule to which a committee has objected, JCRAR must take action with respect to the committee's objection.

Further, Act 21 provides that if a committee or JCRAR has not concluded its jurisdiction over a proposed rule or a part of a proposed rule before the day that the next Legislature convenes, that jurisdiction ceases and the proposed rule or part of the proposed rule is referred to the appropriate standing committee or JCRAR of the next Legislature, which begins a new committee review period.

Lastly, Act 21 prohibits an agency from promulgating a proposed rule or a part of a proposed rule until the end of the JCRAR review period or until JCRAR nonconcur in the objection of a committee, concurs in the approval of the committee, otherwise approves the proposed rule or part of the proposed rule, waives its jurisdiction over the proposed rule or part of the proposed rule, or until a bill introduced to prevent promulgation of the proposed rule fails to be enacted.

We will be available at the June 20, 2013, Board meeting to answer questions.