



STATE OF WISCONSIN
Department of Employee Trust Funds
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CORRESPONDENCE MEMORANDUM

DATE: August 23, 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 that provides 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 emergency rules and judicial review of administrative rules.

As of August 23, 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

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

Reviewed and approved by Robert J. Marchant, Deputy Secretary
[Signature] Electronically Signed 9/03/13

Table with 3 columns: Board, Mtg Date, Item #. Row 1: JM, 9.26.13, 4E

**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 reviewed by Assembly and Senate committees with no action taken and then referred to the Joint Committee for Review of Administrative Rules (JCRAR). The JCRAR review period expires September 6, 2013.

## **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 was published in the May 31, 2013, Wisconsin Administrative Register and was effective June 1, 2013.

## **III. Rule Approved 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 rule is scheduled to be published in the August 31, 2013, Wisconsin Administrative Register and will be effective September 1, 2013.

## **IV. Rule Approved by WR Board (June 20, 2013)**

**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:** On July 24, 2013, the proposed rule was sent to the Assembly and Senate for review by the appropriate standing committees.

### **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.

### **Emergency Rules**

Act 21 requires that an agency prepare a statement of the scope of a proposed emergency rule and obtain approval of the statement by the Governor and the individual or body with policy-making powers over the subject matter of the emergency rule. If the agency changes the scope of a proposed emergency rule, the agency must prepare and obtain approval of a revised scope statement. In addition, the Act requires that an agency submit a proposed emergency rule in final draft form to the Governor for approval. The Governor may approve or reject a proposed emergency rule. If the Governor approves a proposed emergency rule, the Governor must provide the agency with a written notice of that approval.

In addition, Act 21 provides that economic impact analyses are not required for emergency rules.

### **Judicial Review of Administrative Rules**

Act 21 provides that the exclusive means of judicial review of the validity of a rule is an action for declaratory judgment as to the validity of the rule brought in the circuit court for the county where the party asserting the invalidity of the rule resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for the county where the dispute arose.

Act 21 requires that when a circuit court enters a final order in a declaratory judgment action on the validity of a rule, the court must notify the Legislative Reference Bureau (LRB) of the court's determination as to the validity or invalidity of the rule. The LRB must publish a notice of that determination in the Wisconsin Administrative Register and insert an annotation of that determination in the Wisconsin Administrative Code.

We will be available at the September 26, 2013, Board meeting to answer questions.