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Correspondence Memorandum

Date: November 16, 2018

To: Employee Trust Funds Board
 Teachers Retirement Board
 Wisconsin Retirement Board

From: David H. Nispel, General Counsel
 Dan Hayes, Attorney
 Office of Legal Services

Subject: Administrative Rules Update

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

Periodically, the Office of Legal Services provides a memo to inform Employee Trust Funds Board, Teachers Retirement Board and Wisconsin Retirement Board members about the status of administrative rules being promulgated by the Department of Employee Trust Funds that require approval by the Boards. At this time, there are no such rules being promulgated. So, we are taking the opportunity to provide information to the Board about legislation signed into law in the last legislative session that affects the administrative rulemaking process. In September 2017, ETF provided an update on the "Wisconsin REINS Act," which was signed into law as 2017 Wisconsin Act 57.

The Wisconsin REINS Act was followed by two more laws that passed late in the legislative session that affect the administrative rule process. And it was preceded by another. This legislation is summarized below.

2017 Wisconsin Act 108

Act 108 provides expedited process to repeal certain rules and requires agencies to engage in ongoing review of administrative rules, among other provisions. Specifically, the Act provides for the following:

- The standard rule promulgation process has many required steps. The Act simplifies this process by creating an expedited process for the repeal of certain administrative rules. It requires state agencies to petition the Joint Committee for Review of Administrative Rules (JCRAR) to repeal certain existing unauthorized rules using the expedited process. "Unauthorized rule"

Reviewed and approved by Robert J. Conlin, Secretary

Electronically signed 11/30/18

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is defined as “a rule that an agency lacks the authority to promulgate due to the repeal or amendment of the law that previously authorized its promulgation.”

- The Act requires agencies to submit a biennial report to JCRAR. The report must list the rules for which the following circumstances apply:
 - The authority to promulgate the rule has been eliminated or restricted.
 - The rule is obsolete or has been rendered unnecessary.
 - The rule is duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a court ruling.
 - The rule is economically burdensome.

The report must also describe the agency’s actions, if any, to address each of the rules listed and must include an explanation for any listed rule for which the agency has not taken any action. It must also describe the status of each rule listed in the agency’s previous report. If an identified rule is unauthorized, and is not already in the process of repeal, the agency must submit a petition for expedited repeal as described above within 30 days after submitting the report. In addition to the agency report, the Act requires Legislative Reference Bureau to submit a biennial report to JCRAR. The report must identify any rules that are possibly in need of revision.

- The Act requires each agency to review legislative enactments to determine whether the enactment requires any change in the agency’s administrative rules. If a rule change is necessary, the Act requires the agency to initiate the rule promulgation process within six months of the effective date of the enacted legislation.
- The Act allows JCRAR to request a retrospective Economic Impact Analysis from an agency.

2017 Wisconsin Act 158

Act 158 prohibits certain state boards, such as those attached to ETF, and certain other state entities from promulgating rules if the board has not taken any action with respect to rule promulgation in at least 10 years. Such a board, called a “restricted agency” may only promulgate rules if they are specifically authorized to do so by subsequent legislation.

2017 Wisconsin Act 39

An agency begins the administrative rule promulgation process by preparing a scope statement, which contains certain information about the agency’s plans to promulgate a rule. Under Act 39, a scope statement expires 30 months after its publication in the Administrative Register, if the agency has not submitted a proposed rule to the Legislature within those 30 months.

Staff will be at the Board meeting to answer any questions.