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CORRESPONDENCE MEMORANDUM

DATE: May 31, 2013
TO: Teachers Retirement Board
FROM: Robert J. Marchant, Deputy Secretary
SUBJECT: Qualifications and Terms of Office

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

At the request of Teachers Retirement (TR) Board Chairperson Michael Langyel, I have prepared this memorandum describing the qualifications required of TR Board members and TR Board appointees to the Employee Trust Funds (ETF) Board. The memorandum also describes the history and roles of the TR and ETF Boards and discusses applicable terms of office. Please note that statutes cited in this memorandum are attached for your reference.

History and Roles of TR and ETF Boards

The Wisconsin Retirement System (WRS) was created in 1982 with the merger of the State Teachers Retirement System, the Milwaukee Teachers Retirement System, and the Wisconsin Retirement Fund. The Legislature created three boards as part of this merger: the TR Board, the Wisconsin Retirement (WR) Board, and the ETF Board. The ETF Board is the primary policy-making board overseeing the WRS. It has significant administrative functions, such as approving contribution rates and annuity adjustments, selecting the ETF consulting actuary, approving administrative rules, and selecting the ETF Secretary. It also performs some quasi-judicial functions, hearing appeals of Department determinations and other matters. Members of the ETF Board are trustees of the Public Employee Trust Fund. The TR Board and WR Board have fewer responsibilities. These boards are primarily advisory to the ETF Board and ETF Secretary, although they do perform some administrative and quasi-judicial functions.

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Terms and Qualifications of TR Board Members

The TR Board is created under Wis. Stats. s. 15.165 (3) (a). The statute specifies there are 13 board members in 7 categories. Members serve for staggered 5-year terms. Four of the members are appointed by the Governor. Nine of the members are elected from various groups of WRS participants. The members must satisfy the following criteria, as applicable, at the time of their appointment or election to the board:

Elected

- A. Six public school teachers who are participating employees in the WRS, elected by other public school teachers who are also participating employees. To be eligible for election under this provision an individual must not be eligible for election under any other provision.
- B. One teacher in Milwaukee who is a participating employee in the WRS, elected by Milwaukee public school teachers who are also participating employees.
- C. One public school teacher from a technical college district who is a participating employee in the WRS, elected by teachers from technical college districts who are also participating employees.
- D. One annuitant who was a teacher participant in the WRS, elected by other annuitants who were also teacher participants in the WRS.

Appointed

- E. Two University of Wisconsin System representatives from different campuses who are teacher participants in the WRS.
- F. One public school administrator who is not a classroom teacher.
- G. One school board member.

What If a TR Board member ceases to meet the applicable qualifications of TR Board membership (for example, if a public school teacher elected to the TR Board under A. above ceases to be a public school teacher)?

Although the applicable statutes are not a model of clarity, the law appears to permit such a member to continue serving. There is no law specifying that a vacancy is created if a TR Board member, during his or her term of office, ceases to meet the qualifications applicable at the time of his or her appointment or election. Typically, a vacancy is not created if a member of a state board ceases to meet the qualifications applicable at the time of his or her election or appointment (see Wis. Stats. s. 17.03, which generally defines vacancies in office).

Likewise, the TR Board's governing statute, Wis. Stats. s. 15.165, does not specifically indicate that these circumstances create a vacancy. In fact, Wis. Stats. s. 15.165 (1) (a) specifies that a member who ceases to meet the qualifications applicable at the time of

his or her election or appointment ceases to be a member of the board *upon election or appointment of a qualified successor*. This statute is susceptible to differing interpretations. However, it would be reasonable to assume the Legislature intended it to clarify that a change in a member's circumstances does not create a vacancy.

With regard to appointed members of the TR Board, it should be noted that under Wis. Stats. s. 17.07 (5), the Governor may remove and replace appointees at pleasure, at any time.

Terms and Qualifications of TR Board Appointees to the ETF Board

The ETF Board is created under Wis. Stats. s. 15.16 (1). The statute specifies there are 13 ETF Board members of various categories. Certain members are ex-officio, others are elected from specific groups of WRS participants, and others are appointed. Elected and appointed members serve for 4-year terms. The TR Board appoints 4 of the 13 ETF Board members. At the time of their appointment to the ETF Board, the TR Board appointees must be members of the TR Board and must satisfy the following criteria, as applicable:

- A. At least one individual who was elected to the TR Board as described in A. (public school teacher) or C. (technical college district teacher) above.
- B. At least one individual who was appointed to the TR Board as described in E. above (University of Wisconsin System representative).
- C. At least one individual who was elected to the TR Board as described in B. above (Milwaukee teacher).
- D. At least one individual who was appointed to the TR Board as described in F. (public school administrator) or G. (school board member) above.

What If a TR Board appointee to the ETF Board ceases to meet the applicable qualifications of ETF Board membership or ceases to be a member of the TR Board?

The appointee may continue to serve on the ETF Board, unless the TR Board removes and replaces the appointee. Under Wis. Stats. s. 17.07 (6), the TR Board may remove and replace its ETF Board appointees at its pleasure, at any time. However, in this circumstance, the TR Board is not required to do so. As discussed above, under Wis. Stats. s. 17.03, a vacancy is typically not created if a member of a state board ceases to meet the qualifications applicable at the time of his or her appointment. Nor is a vacancy created on the ETF Board by expiration of the member's term on the TR Board. This is the case even if a replacement on the TR Board is appointed or elected.

It is also important to note that, because the office of the ETF Board member is not elective, expiration of an ETF Board member's term on the ETF Board does not create

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a vacancy on the ETF Board. See Wis. Stats. s. 17.03 (10). Such a member continues to serve indefinitely, as a holdover appointee on the ETF Board until a successor is appointed. This opinion tracks advice provided by Attorney General La Follette to ETF Secretary Gates on August 12, 1986.

I hope this memorandum is helpful. I will be present at the June 20, 2013 TR Board meeting to discuss the memorandum and answer questions.

15.16 Department of employee trust funds; creation. There is created a department of employee trust funds under the direction and supervision of the employee trust funds board.

(1) EMPLOYEE TRUST FUNDS BOARD. The employee trust funds board shall consist of the governor or the governor's designee on the group insurance board, the director of the office of state employment relations or the director's designee and 11 persons appointed or elected for 4-year terms as follows:

(a) Four members shall be members of the teachers retirement board, appointed by that board.

1. At least one appointee under this paragraph shall have been appointed or elected to the board under s. [15.165 \(3\) \(a\) 1.](#) or [2.](#)

2. At least one appointee under this paragraph shall have been appointed to the board under s. [15.165 \(3\) \(a\) 4.](#)

3. At least one appointee under this paragraph shall have been elected to the board under s. [15.165 \(3\) \(a\) 7.](#)

4. At least one appointee under this paragraph shall have been appointed to the board under s. [15.165 \(3\) \(a\) 3.](#) or [5.](#)

(b) Four members shall be members of the Wisconsin retirement board, appointed by that board.

1. At least one appointee under this paragraph shall have been appointed to the board under s. [15.165 \(3\) \(b\) 1., 2., 4., 5.](#) or [8.](#)

2. At least one appointee under this paragraph shall have been appointed to the board under s. [15.165 \(3\) \(b\) 3., 6.](#) or [7.](#)

3. At least one appointee under this paragraph shall have been appointed to the board under s. [15.165 \(3\) \(b\) 7.](#) or [8.](#)

(c) One member shall be a public member who is not a participant in or beneficiary of the Wisconsin retirement system, with at least 5 years of experience in actuarial analysis, administration of an employee benefit plan or significant administrative responsibility in a major insurer. It is the intent of the legislature that the member appointed under this paragraph shall represent the interests of the taxpayers of this state and shall not be representative of public employee or employer interests.

(d) One member shall be an annuitant, as defined for purposes other than life insurance under s. [40.02 \(4\)](#), elected by annuitants, as defined for purposes other than life insurance under s. [40.02 \(4\)](#).

(f) One member who is a participant in the Wisconsin retirement system and who is a technical college educational support personnel employee, as defined in s. [40.02 \(55g\)](#), or an educational support personnel employee, as defined in s. [40.02 \(22m\)](#), elected by participating employees meeting the same criteria.

15.165 Same; attached boards.

(1) BOARD MEMBERS.

(a) Any member of a board created under this section who loses the status upon which the appointment or election was based shall cease to be a member of the board upon appointment or election to the board of a qualified successor.

(b) For purposes of this section, annuitants are deemed to be employees in the last position in which they were covered by the Wisconsin retirement system, except that annuitants may not be elected, appointed or vote under sub. [\(3\) \(a\) 1.](#), [2.](#), [4.](#) or [7.](#)

. . . . **(3)** RETIREMENT BOARDS.

(a) *Teachers retirement board.* There is created in the department of employee trust funds a teachers retirement board. The board shall consist of 13 members, to serve for staggered 5-year terms. The board shall consist of the following members:

1. Six public school teachers who are participating employees in the Wisconsin retirement system and who are not eligible for election under any other subdivision of this paragraph, elected by participating employees meeting the same criteria.

2. One public school teacher from a technical college district who is a participating employee in the Wisconsin retirement system, elected by teacher participating employees from technical college districts.

3. One administrator in Wisconsin's public schools who is not a classroom teacher.

4. Two University of Wisconsin System representatives who are teacher participants in the Wisconsin retirement system. The representatives under this subdivision shall not be from the same campus.

5. One representative who is a member of a school board.

6. One annuitant who was a teacher participant in the Wisconsin retirement system, elected by the annuitants who were teacher participants.

7. One teacher in the city of Milwaukee who is a participating employee in the Wisconsin retirement system, elected by the teachers of the public schools in that city who are participating employees.

17.03 Vacancies, how caused. Except as otherwise provided, a public office is vacant when:

(1) The incumbent dies.

(2) The incumbent resigns.

(3) The incumbent is removed.

(4) The incumbent ceases to be a resident of:

(a) This state; or

(b) If the office is legislative, the district from which elected; or

(bm) If the office is a district attorney, the prosecutorial unit from which elected; or

(c) If the office is local and elective, the county, city, village, town, district or area from which elected, except as provided in ss. [60.30 \(6\)](#), [119.08 \(1\) \(c\)](#) and [120.05 \(1\) \(d\)](#); or

(d) If the office is local and appointive, and residency is a local requirement, the county, city, village, town, district or area within which the duties of the office are required to be discharged.

(4m) In the case of a school district office, the incumbent is absent from the district for a period exceeding 60 days.

(5) Whether or not sentenced to imprisonment, the incumbent is convicted and sentenced by a state or federal court for treason, felony or other crime of whatsoever nature punishable by imprisonment in any jail or prison for one year or more, or for any

offense involving a violation of the incumbent's official oath. A vacancy so created is not affected by a stay of execution of judgment. Reversal of the judgment, but not a pardon, immediately restores the incumbent to office if the term has not expired and entitles the incumbent to the emoluments of the office for the time the incumbent would have served in the office but for the judgment.

(6) A competent tribunal voids the election or appointment; or adjudges the incumbent to be incapable of understanding the objective of the elective process; or places the incumbent under guardianship, unless the court finds that the incumbent is competent to exercise the right to vote.

(7) A person elected or appointed or reelected or reappointed to any office neglects or refuses to take and file the official oath or to execute or renew the official bond if required, or to file the oath or bond as prescribed by law.

(8) The incumbent neglects or refuses to execute and file an additional bond, when lawfully required, as prescribed by law.

(9) A person elected or appointed to fill a vacancy or for a full term declines the office in writing or dies before qualifying or declines in writing or dies before the time when, by law, the person should enter upon the duties of the office to which elected or appointed.

(10) If the office is elective, the incumbent's term expires, except for the office of sheriff, coroner, register of deeds or district attorney.

(11) If the office is a school board seat, the first annual school meeting of a school district fails to elect school board members for the district.

(12) The offices are established upon the creation by the legislature of a new county and a new town.

(13) Any other event occurs which is declared by any special provision of law to create a vacancy.

17.07 Removals; legislative and appointive state officers. Removals from office of legislative and appointive state officers may be made as follows:

. . . . (5) State officers serving in an office that is filled by appointment of the governor alone for a fixed or indefinite term or to supply a vacancy in any office, elective or appointive, except justices of the supreme court and judges and the adjutant general, by the governor at pleasure; the adjutant general, by the governor, at any time, for cause or for withdrawal of federal recognition of his or her commission under [32 USC 323](#); and all officers appointed by the governor during the recess of the legislature whose appointments are required to be later confirmed by the senate shall be deemed to be appointed by the governor alone until so confirmed.

(6) Other state officers serving in an office that is filled by appointment of any officer or body without the concurrence of the governor, by the officer or body having the authority to make appointments to that office, at pleasure, except that officers appointed according to merit and fitness under and subject to ch. [230](#) or officers whose removal is governed by ch. [230](#) may be removed only in conformity with that chapter.