

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
CREATING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules included in this order is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

These rules are for the one-time distribution of 3 closed nursing home beds to a nursing home or nursing homes that serve only veterans. Following distribution of the 3 beds, the rules will be allowed to lapse.

Section 150.31, Stats., establishes a statewide bed limit for nursing homes as one means of controlling nursing home costs and Medical Assistance program expenditures. Within that bed limit a facility may close or its bed capacity may be reduced, in which case beds are freed up and may be redistributed by the Department under s. HSS 122.05(1)(c).

The Wisconsin Veterans Home at King has 4 separately licensed nursing home buildings on its grounds, and a total licensed capacity of 718 beds. It is operating at 99.9 percent of capacity with a long waiting list for admission. Managers of the Wisconsin Veterans Home have decided to close their underutilized 3 bed hospital operation at King. The 3 hospital beds are currently located in Stordock Hall. The 3 nursing home beds will replace the hospital beds. Because of the burgeoning population of older veterans, whose active service was during World War II, the Korean War, and the Vietnam War, and the immediate pressure on admissions to the facility, and the desirability of having flexibility when moving residents, Wisconsin Veterans Home managers have asked that the space previously used for hospital beds be converted to nursing home space and that 3 closed nursing home beds be transferred to the Veterans Home. These beds could be put on line immediately and provide some relief to those awaiting admission.

This rulemaking order establishes a process for considering applications for 3 closed nursing home beds to be made available to a nursing home or nursing homes that serve only veterans, that ask for no more than 3 beds and that do not require space to be added to the building in which the beds will be located to accommodate those beds.

ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 150.03 and 227.24(1)(a), Stats., the Department of Health and Family Services hereby creates rules interpreting ss. 150.31 and 150.33 to 150.40, Stats., as follows:

SECTION 1. HSS 122.10 is created to read:

HSS 122.10 Special provisions for certain closed beds. (1) In this section, “veteran” has the meaning specified in s. 45.35(5), Stats.

(2)(a) Notwithstanding any provision of this chapter to the contrary, applications may be submitted under this section to add to one or more existing nursing homes a total of 3 beds.

(b) An application under this section may be accepted only if it meets the following conditions:

1. The proposal is to add not more than 3 beds;
2. With the addition of the beds, a nursing home will meet all applicable requirements of ch. HSS 132 without requiring the addition of space to the structure in which the existing licensed facility is housed; and
3. The applicant’s legal authority or articles of incorporation permit it to serve only veterans, spouses of veterans or parents of veterans.

(c) The department may not approve an application under this section unless:

1. The applicant demonstrates that there is a compelling public interest to approve the application based on the documented special needs of Wisconsin veterans;
2. The cost of renovating or providing an equal number of nursing home beds or of an equal expansion would be consistent with the cost of other state owned nursing homes; and
3. The applicant demonstrates that it meets the criteria specified in s. HSS 122.07(1), except pars. (c) and (d).

(3) An application under sub. (2) which meets all the applicable criteria in sub. (2)(c) shall be subject to the following selection process:

(a) If after removing from consideration all applications which fail to meet one or more review criteria, there remain more applications than can be approved for the beds available under the bed distribution process in sub. (2), the department shall rank the remaining applications according to how each meets each application review criterion under sub. (2) (c), assigning the lowest number to the application which best meets each criterion.

(b) The department shall approve applications in order, beginning with the lowest score, until all available beds are allocated for the bed distribution process in sub. (2). If there is a tie between applications for the last available approval under that distribution process, the department shall rank the applications according to the number of veterans and spouses of veterans served by the nursing home as indicated by the average daily census taken from the department's most recently completed annual survey of nursing homes.

SECTION 2. The following provision is created to read:

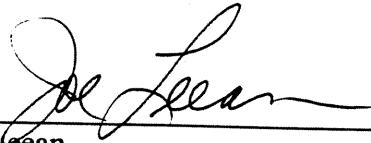
Section HSS 122.10 shall continue to govern review of any application being reviewed under this section on the date the rules included in this order expire.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper, as provided in s. 227.24(1)(c), Stats.

Wisconsin Department of Health and
Family Services

Dated: **July 27, 1999**

By: _____


Joe Lcean
Secretary

SEAL:



Tommy G. Thompson
Governor

Joe Leean
Secretary

State of Wisconsin

Department of Health and Family Services

OFFICE OF LEGAL COUNSEL

1 WEST WILSON STREET
P.O. BOX 7850
MADISON WI 53707-7850

TELEPHONE: (608) 266-8428

August 2, 1999

AUG 03 REC'D

✓ The Honorable Judy Robson, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin

The Honorable Glenn Grothman, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
Madison, Wisconsin

Dear Senator Robson and Representative Grothman:

This is notification that the Department tomorrow will publish an emergency rulemaking order to establish a process for the one-time distribution of 3 closed nursing home beds to a Wisconsin nursing home that serves only veterans. A copy of the emergency order is attached to this letter.

The Wisconsin Veterans Home at King has asked the Department for 3 closed nursing home beds to be located in existing space at the Veterans Home where there has been a 3-bed hospital unit. The hospital unit has been closed. There is a statewide limit on nursing home beds, as specified under s. 150.31, Stats. Within that limit the Department in accordance with ch. HSS 122 rules may distribute closed beds. A process and criteria for distribution are in the rules. A special process and some different criteria are needed and are set out in this order that will permit the distribution of 3 beds to a home serving only veterans that already has the space for the beds.

The Department is moving as quickly as possible with this rule change because of the long waiting list for admission to the Wisconsin Veterans Home which operates 4 separately licensed nursing homes that are at nearly 100% of capacity. Once the rule change is in effect, there is still a process which must be followed that takes a few months before the applicant home will receive the beds.

If you have any questions about these emergency rules, you may contact Connie Miller of the Department's Division of Health Care Financing at 266-0999.

Sincerely,


Paul E. Menge
Administrative Rules Manager

Attachment

EMERGENCY RULE

**ORDER of the Department of Employee Trust Funds, Employee Trust Funds Board,
Teacher Retirement Board and Wisconsin Retirement Board
promulgating an:**

EMERGENCY RULE renumbering and amending ETF 20.25 (1) and creating ETF 20.25 (1) (b) regarding the distribution to annuitants of the total amount distributed from the transaction amortization account to the annuity reserve under the non-statutory provisions of 1999 Wis. Act 11.

Analysis Prepared by the Department of Employee Trust Funds.

Section 27 (1) (a) of 1999 Wis. Act 11 [*introduced as 1999 Assembly Bill 495*] directs that \$4,000,000,000 be distributed from the Transaction Amortization Account of the Public Employee Trust Fund's fixed retirement investment trust to the reserves and accounts of the fixed retirement investment trust, in an amount equal to a percentage of the total distribution determined by dividing each reserve's and account's balance on January 1, 1999 by the total balance of the fixed retirement investment trust on that date.

Section 27 (1) (d) of the Act further directs that the total amount allocated to the annuity reserve by the legislation, shall be distributed as provided under Wis. Stat. § 40.27 (2). This statutory subsection provides that surpluses in the fixed annuity reserve shall be distributed by the Employee Trust Funds Board upon the recommendation of the actuary. These distributions are made in the form of percentage increases in the amount of the monthly annuity in force. Wis. Stat. § 40.27 (2) (b) provides that the ETF Board may, through administrative rule, apply prorated percentages based on the annuity effective date to annuities with effective dates during the calendar year preceding the effective date of the distribution. No distinction, other than annuity effective date, may be made.

The ETF Board previously adopted Wis. Admin. Code § ETF 20.25 (1) with respect to prorating the annual fixed annuity dividend for annuities which began before the calendar year preceding the dividend. For these annuities, the prorated percentage is calculated by multiplying the number of full months the annuity was in force during the year times the percentage change applicable to annuities effective for the full year, dividing the result by 12 and rounding the answer to the nearest tenth of a percent. If the resulting increase would be less than 1%, no increase applies.

If the ETF Board takes no action, the same prorating would apply to the distribution of the funds transferred into the annuity reserve by 1999 Wis. Act 11, § 27 (1) (a). This emergency administrative rule provides that there will be no prorating of the distribution of those funds. The same percentage increase will be applied to annuities in effect for the full year or in effect for only part of 1999.

Text of Emergency Rule

SECTION 1. ETF 20.25 (1) is renumbered ETF 20.25 (1) (a) and amended to read:

ETF 20.25 (1) (a) A Except as otherwise provided in par. (b), a fixed annuity dividend, as recommended by the actuary and approved by the chair of the employe trust funds board and the department's secretary, shall be distributed based on each December 31 valuation as specified in s. 40.27 (2), Stats. The dividend shall be effective on the April 1 following the valuation date and shall apply to fixed annuities effective on or prior to the date of the valuation. As authorized under s. 40.27 (2) (b), Stats., different percentages shall be determined for annuities effective for less than a full year on the valuation date. The percentages shall be determined by multiplying the number of full months the annuity was in force times the percentage change applicable to annuities effective for the full year, dividing the result by 12 and rounding the answer to the nearest tenth of a percent. No increase shall be applied to any annuity for which the resulting increase would be less than one percent.

SECTION 2. ETF 20.25 (1) (b) is created to read:

ETF 20.25 (1) (b) The total amount distributed to the annuity reserve under 1999 Wis. Act 11, § 27 (1) (a) shall be distributed effective April 1, 2000, in the form of a percentage increase. The percentage shall be recommended by the actuary separate from the distribution of any surplus created by the annual distribution under s. 40.04 (3) (a) or otherwise. The percentage under this paragraph shall be the same for all affected

annuities, including those with effective dates after December 31, 1998 and before January 1, 2000.

(End of Rule Text)

Effective date.

This rule shall take effect on December 31, 1999, as an emergency rule.

Finding of Emergency.

The Department of Employee Trust Funds, Employee Trust Fund Board, Teacher Retirement Board and Wisconsin Retirement Board find that an emergency exists and that this administrative rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

The Public Employee Trust Fund was created for the purpose of helping public employes to protect themselves and their beneficiaries against the financial hardships of old age, disability, death, illness and accident. The Trust Fund thus promotes economy and efficiency in public service by facilitating the attraction and retention of competent employes, by enhancing employe morale, by providing for the orderly and humane departure from service of employes no longer able to perform their duties effectively, and by establishing equitable benefit standards throughout public employment. There are approximately 102,000 annuitants of the Wisconsin Retirement System, of whom about 80% reside throughout the State of Wisconsin. The Department of Employee Trust Funds estimates that up to 7,000 public employes covered by the Wisconsin Retirement System will retire and take annuity benefits effective during 1999.

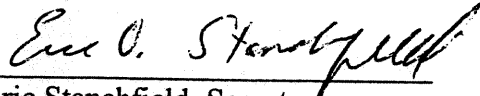
WRS participants who retire during 1999 are not eligible to have their retirement benefits calculated using the higher formula factors for pre-2000 service which are provided by the treatment of Wis. Stat. § 40.23 (2m) (e) 1. through 4. by 1999 Wis. Act 11. Section 27 (b) 2. of the Act directs that any funds allocated to the employer reserve in the Trust Fund as a result of the \$4 billion transfer mandated by the Act, which exceed \$200,000,000 shall be applied towards funding any liabilities created by using the higher formula factors with respect to pre-2000 service.

If the existing administrative rule mandating proration is not revised, then the distribution of the funds transferred into the annuity reserve by Act § 27 (1) (a) of 1999 Wis. Act 11 will be prorated with respect to annuities with effective dates after December 31, 1998, and before January 1, 2000. The extraordinary transfer of funds from the Transaction Amortization Account (TAA) mandated by 1999 Wis. 11 causes funds, which would otherwise have remained in the TAA to be recognized and fund annuity dividends in later years, to instead be transferred into the annuity reserve in 1999 and paid out as an annuity dividend effective April 1, 2000. Normally, annuities effective during 1999 would receive only a prorated dividend. If this occurred with respect to this

extraordinary distribution, then annuitants with annuity effective dates in 1999 would be deprived of a portion of the earnings of the Public Employe Trust Fund that would otherwise have affected their annuities as of April 1, 2001 and in subsequent years.

Promulgation of an emergency rule is the only available option for revising the effect of Wis. Admin. Code § ETF 20.25 (1) before December 31, 1999. Accordingly, the Department of Employe Trust Funds, Employe Trust Funds Board, Teacher Retirement Board and Wisconsin Retirement Board conclude that preservation of the public welfare requires placing this administrative rule into effect before the time it could be effective if the Department and Boards were to comply with the scope statement, notice, hearing, legislative review and publication requirements of the statutes.

Dated this 22nd day of December, 1999.



Eric Stanchfield, Secretary
Department of Employe Trust Funds

This emergency rule was approved for promulgation by the Teacher Retirement Board and the Wisconsin Retirement Board at the respective board meetings on December 9, 1999, and by the Employe Trust Funds Board at its meeting on December 10, 1999.



Judith B. Robson

Wisconsin State Senator

January 18, 2000

Eric O. Stanchfield
Secretary, Department of Employee Trust Funds
P.O. Box 7931
Madison, WI 53707-7931

Re: Emergency Rule ETF 20.25

Dear Secretary Stanchfield:

I am in receipt of your letter dated January 6, 2000 regarding emergency rule ETF 20.25.

In your letter you state that the emergency rule was published in the State Journal on December 27, with an effective date of December 31. However, your letter to the Legislature is dated January 6, was signed by you on January 7, and was received in my office still later.

From the dates of these actions, I can only conclude that you are unaware of the emergency rule process. Section 227.24(3) of the statutes clearly provides that members of the Legislature will be mailed a copy of the rule at the same time the rule is filed with the secretary of state. In this case you waited more than a week after the effective date of the rule before notifying the members of the Legislature.

In addition, section 227.24(3) requires that each emergency rule shall be accompanied by a statement of the finding of emergency by the agency. Emergency rule ETF 20.25 contains no such statement of emergency. There is no explanation of how the rule is necessary for the preservation of the public peace, health, safety or welfare. Section 227.24(1)(a), *Stats*. Aside from a real explanation, you have not even made a rote recitation that the rule is necessary to preserve the public well being.

Moreover, it is customary for agencies promulgating emergency rules to explain why it is impossible to go through the ordinary rule making process. You have not provided any explanation along those lines.

In some cases, use of the emergency rule process even in the absence of an emergency is authorized by legislation. In those cases, the promulgating agency makes a statement to the effect that no statement of emergency is included because the rule is authorized by legislation. There is no such statement in emergency rule ETF 20.25.

15 South, State Capitol, Post Office Box 7882, Madison, WI 53707-7882 • Telephone (608) 266-2253

District Address: 2411 East Ridge Road, Beloit, WI 53511

Toll-free 1-800-334-1468 • E-Mail: sen.robson@legis.state.wi.us

Printed on recycled paper.

Because you have not included a finding of emergency in your promulgation of the rule, I have no way of knowing whether or not an emergency actually exists. There may well be a situation that needs to be acted on without delay. Then again, there may not. Based on your letter and the notice of hearing and emergency rule, there is simply no way to determine whether or not an emergency exists.

Finally, in January, 1998, the co-chairs of the Joint Committee for Review of Administrative Rules requested advance notification before emergency rules are promulgated. I did not receive any such notification before ETF 20.25 was promulgated.

I am writing this letter because the emergency rule process is being used more and more in the absence of real emergencies. I believe that the emergency rule process should be used sparingly because of the lack of public input before rules are promulgated, the lack of opportunity for the press to inform the public of pending policy decisions, and the lack of legislative oversight. The recent fiasco regarding betting on snowmobile races amply illustrates the benefits of the regular rule process and the pitfalls of the emergency rule process.

More importantly, if agencies expect the Legislature to look favorably on their emergency rules, the statutory procedure for promulgating such rules should be followed precisely.

If you have any questions about the emergency rule process, please feel free to contact me at your convenience.

Sincerely,



Senator Judith B. Robson
Co-chair, Joint Committee for Review of Administrative Rules

JBR:da

cc: Rep. Glenn Grothman, Co-Chair, JCRAR
members of the JCRAR
Ron Sklansky, Legislative Council

SENATOR JUDITH B. ROBSON
CO-CHAIR
P.O. BOX 7882
MADISON, WI 53707-7882
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR
P.O. BOX 8952
MADISON, WI 53708-8952
(608) 264-6486

**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

July 25, 2000

BY INTER-D

Secretary Eric Stanchfield
Department of Employee Trust Funds
801 West Badger Road
Madison, Wisconsin

Re: Emergency Rule ETF 20.25(1)

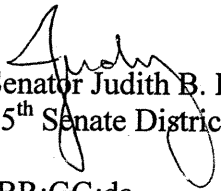
Dear Secretary Stanchfield:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on July 25, 2000. At that meeting, the JCRAR received public testimony regarding Emergency Rule ETF 20.25(1), relating to the distribution to annuitants of the total amount distributed from the transaction amortization account to the annuity reserve under the non-statutory provisions of 1999 Wisconsin Act 11.


Based on that testimony, the committee adopted a motion extending the effective period of Emergency Rule ETF 20.25(1) for 60 days. The committee approved the motion on a 7 to 0 vote.

Pursuant to § 227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,


Senator Judith B. Robson
15th Senate District

JBR:GG:da


Representative Glenn Grothman
59th Assembly District

AUG 03 2000



STATE OF WISCONSIN

Department of Employee Trust Funds

Eric O. Stanchfield

Secretary

801 West Badger Road

P.O. Box 7931

Madison, WI 53707-7931

August 1, 2000

Honorable Judith Robson
Co-Chair
Joint Committee for Review of Administrative Rules
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Robson:

I am writing to thank you for your favorable vote on the extension of our emergency rule, ETF 20.25 (1), relating to the annuitant dividend distribution under the Wisconsin Retirement System.

As you are aware from the public testimony presented by my staff on the emergency rule, there are 6,281 annuitants whose annuities will be affected depending upon the action by the Wisconsin Supreme Court in *WPPA v. Lightbourn*. If 1999 Wisconsin Act 11 is found constitutional, it is imperative that those annuitants retiring in 1999 receive the full annuitant dividend based upon the portion of funds credited from the transaction amortization account (TAA) to the annuity reserve.

I would also like to extend my appreciation for your support in allowing the Department to proceed with final promulgation and publication of our proposed permanent rule on the annuitant dividend distribution. We are hopeful that after the Legislative Standing Committees' review period has expired we will be able to publish our permanent rule with an effective date of October 1, 2000. It is the Department of Employee Trust Funds Board's intent to have this non-proration rule in effect at all times until the distribution actually occurs or until the Court rules that portion of Act 11 unconstitutional. The recent approval and extension of our emergency rule and anticipated publication of our permanent rule will ensure that the Board's intent will be fulfilled.

Thank you again for your continued support for the Wisconsin Retirement System and its members. If you have any questions, please don't hesitate to contact me directly at 266-0301.

Sincerely,

Eric O. Stanchfield
Secretary

SENATOR JUDITH B. ROBSON
CO-CHAIR
PO Box 7882
MADISON, WI 53707-7882
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR
PO Box 8952
MADISON, WI 53708-8952
(608) 264-8486

**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

Emergency Rule Extension Motion Form

Last Modified May2000

Date: July 25, 2000 Location: 300 Southeast, State Capitol

Moved by Robson, Seconded by Schultz

THAT, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule ETF 20.25(1) by 60 days, at the request of the Department of Employee Trust Funds.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBLISKI	✓		
4. Senator WELCH	✓		
5. Senator SCHULTZ	✓		
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON			
8. Representative SERATTI			
9. Representative KREUSER			
10. Representative BLACK	✓		
Totals			

Motion Carried

Motion Failed

SENATOR JUDITH B. ROBSON
 CO-CHAIR
 PO BOX 7882
 MADISON, WI 53707-7882
 (608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
 CO-CHAIR
 PO BOX 8952
 MADISON, WI 53708-8952
 (608) 264-8486

**JOINT COMMITTEE FOR
 REVIEW OF ADMINISTRATIVE RULES**

Emergency Rule Extension Motion Form

Last Modified May2000

Date 5/10/00 Location 201 SE
 Moved by Grobschmidt, Seconded by Kreuser

THAT, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule ETF 20.25(1) by 60 days, at the request of the Department of Employee Trust Funds.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON		✓	
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBLISKI	✓		
4. Senator WELCH	✓		
5. Senator SCHULTZ	✓		
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI	✓		
9. Representative KREUSER	✓		
10. Representative BLACK	✓		
Totals	9	1	

* polled by telephone

Motion Carried

Motion Failed

SENATOR JUDITH B. ROBSON
CO-CHAIR
P.O. BOX 7882
MADISON, WI 53707-7882
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR
P.O. BOX 8952
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

May 11, 2000

Secretary Eric Stanchfield
Department of Employee Trust Funds
801 West Badger Road
Madison, Wisconsin

BY INTER-D MAIL


Re: Emergency Rule ETF 20.25(1)

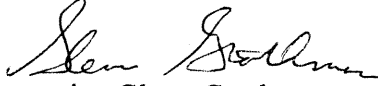
Dear Secretary Stanchfield:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on May 10, 2000. At that meeting, the JCRAR received public testimony regarding Emergency Rule ETF 20.25(1), relating to distribution to annuitants of the total amount distributed from the transaction amortization account to the annuity reserve under the non-statutory provisions of 1999 Wisconsin Act 11. Based on that testimony, the committee adopted a motion extending Emergency Rule ETF 20.25(1) for 60 days. The committee approved the motion on a 9 to 1 vote.

Pursuant to § 227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,


Senator Judith B. Robson
15th Senate District


Representative Glenn Grothman
59th Assembly District

JBR:GG:da



STATE OF WISCONSIN

Department of Employee Trust Funds

Eric O. Stanchfield
Secretary

*801 West Badger Road
P.O. Box 7931*

Madison, WI 53707-7931

April 26, 2000

HONORABLE JAMES BAUMGART
STATE SENATE
CHAIR, SENATE COMMITTEE ON LABOR
306 SOUTH, STATE CAPITOL
P.O. BOX 7882
MADISON WI 53707-7882

RE: Clearinghouse Rule #00-011, Clearinghouse Rule #00-021 and Clearinghouse Rule #00-022

Dear Senator Baumgart:

I am writing in response to action taken by the Senate Committee on Labor concerning promulgation of three Department of Employee Trust Funds Clearinghouse Rules: CR #00-011 relating to distribution to annuitants of the total amount distributed from the transaction amortization account to the annuity reserve under the non-statutory provisions of 1999 Wisconsin Act 11; CR #00-021 relating to the participation in the variable trust fund; and CR #00-022 relating to the Department's interpretation of what Wisconsin Retirement System (WRS) creditable service is considered performed before January 1, 2000 versus considered performed on or after that date under 1999 Wisconsin Act 11.

On March 27, 2000, Senator Judy Robson, Co-Chair of the Joint Committee on Review of Administrative Rules, sent a letter to you and Representative Steve Wieckert urging both the Senate Committee on Labor and the Assembly Committee on Government Operations to ensure that all three Clearinghouse Rules were not promulgated. The delay in promulgation was requested because Legislative Clearinghouse comments during the review period on the rules took the position that since implementation of 1999 Wisconsin Act 11 was enjoined by the Wisconsin Supreme Court, there was no statutory authority for the rules.

On April 18, 2000, the Senate Committee on Labor held a public hearing on the above three Clearinghouse Rules. The Committee unanimously passed a motion that required the Department to delay submission of these rules to the Revisor of Statutes for publication until the Wisconsin Supreme Court has ruled on the validity of 1999 Wisconsin Act 11. In addition, the Department, on or before May 9, 2000, was asked to provide written assurance that it will submit the three rules to the Revisor for publication only after the Court has ruled on the validity of Act 11. In the absence of this assurance, the Committee plans to object to the three rules in their entirety.

The Employee Trust Funds Board, the Department and I requested a preliminary injunction barring implementation of 1999 Wisconsin Acts 11 and 12 from the Supreme Court when we filed our petition for original jurisdiction and requested to have the petition stand as a complaint seeking declaratory judgment. The Supreme Court granted the preliminary injunction in its order dated December 29, 1999, but included the following:

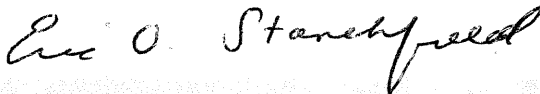
Senator Baumgart
April 26, 2000
Page 2

Notwithstanding the foregoing, the petitioners [*ETF Board, DETF and Secretary*] are not enjoined from taking such contingent and preparatory measures towards implementation of this legislation as they deem appropriate in their discretion and consistent with their fiduciary and other duties and responsibilities for administering the terms of the public employe trust fund. Any question raised by either party regarding the propriety of any particular contingent and preparatory measure toward implementation shall immediately be brought before this court for resolution;

A copy of the preliminary injunction is enclosed for your information. (*Employee Trust Funds Board, et al. v. Lightbourn, et al.*, No. 99-3297-OA, Supreme Court Order dated December 29, 1999, page 2.)

Even though the Department believes the Court's exception in the preliminary injunction provides the statutory authority to promulgate the above three rules, I am providing my written assurance that the Department will not submit Clearinghouse Rules #00-011, #00-021 and #00-022 to the Revisor of Statutes for publication until the Court has ruled on the validity of Act 11.

Sincerely,



Eric O. Stanchfield
Secretary

Enclosure

cc: Committee Members, Senate Committee on Labor
✓ Senator Judith Robson, Co-Chair, Joint Committee on Review of Administrative Rules
Rep. Glenn Grothman, Co-Chair, Joint Committee on Review of Administrative Rules
Rep. Steve Wieckert, Assembly Committee on Government Operations
Gary Poulson, Deputy Revisor, Revisor of Statutes Bureau



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P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

TELEPHONE (608) 266-1830

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Web Site: www.courts.state.wi.us

To:

December 29, 1999

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Madison, WI 53708-8003

Thomas M. Pypers
Theresa M. Hottenroth
Whyte Hirschboeck Dudek, S.C.
One East Main Street, Suite 300
Madison, WI 53703

You are hereby notified that the Court has entered the following order:

No. 99-3297-OA Employee Trust Funds Board, et al. v. Lighthorn, et al.

Petitioners, Employee Trust Funds Board, the Department of Employee Trust Funds, and Eric Stanchfield, Secretary of the Department of Employee Trust Funds, having filed the following: (1) Petition for Leave to Commence an Original Action and for Leave to Have Petition Stand as a Complaint Seeking Declaratory Judgment, and Brief in Support Thereof; (2) Petition for Preliminary Injunction or, alternatively, for Writ of Prohibition, and Brief, Affidavit, and Proposed Preliminary Injunction in support; and respondents, George Lighthorn, Acting Secretary of the Wisconsin Department of Administration, and Jack C. Voight, Wisconsin State Treasurer, having filed a response and joining in the request for an injunction; and proposed intervening respondents, Wisconsin Education Association Council, by its President Terry Craney and its Vice-President, Stan Johnson, and Donald Krahn, Margaret Guertler, Gerald Martin, and Phyllis Pope, having filed a Motion to Intervene, Memorandum in Support, and Response; and the court having considered the above;

No. 99-3297-OA *Employee Trust Funds Board, et al. v. Lightbourn, et al.*
Page Two
December 29, 1999

IT IS ORDERED that petitioners and respondents are preliminarily enjoined from taking those actions directed by 1999 Assembly Bill 495 (1999 Wis. Act 11) and 1999 Assembly Bill 584 (1999 Wis. Act 12) or otherwise implementing or enforcing this legislation until further order of this court. Notwithstanding the foregoing, the petitioners are not enjoined from taking such contingent and preparatory measures toward implementation of this legislation as they deem appropriate in their discretion and consistent with their fiduciary and other duties and responsibilities for administering the terms of the public employee trust fund. Any question raised by either party regarding the propriety of any particular contingent and preparatory measure toward implementation shall immediately be brought before this court for resolution;

IT IS FURTHER ORDERED that by January 21, 2000, respondents shall file a response to petitioner's proposed complaint seeking declaratory judgment. As part of this response, respondents shall specifically address whether they consider any factual matters raised by the petition for original action/proposed complaint to be in dispute;

IT IS FURTHER ORDERED that the disposition of the petition for original action and the motion to intervene be held in abeyance pending the court's consideration of the additional response to be filed by respondents, as well as any additional supplemental matters the court may later order the parties or proposed intervenors to address.

Marilyn L. Graves
Clerk of Supreme Court



STATE OF WISCONSIN

JUN 26 2000

Department of Employee Trust Funds

Eric O. Stanchfield

Secretary

801 West Badger Road

P.O. Box 7931

Madison, WI 53707-7931

June 26, 2000

✓ HONORABLE JUDITH ROBSON
SENATE CO-CHAIR
JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES
ROOM 15 SOUTH, STATE CAPITOL
P.O. BOX 7882
MADISON WI 53707-7882

HONORABLE GLENN GROTHMAN
ASSEMBLY CO-CHAIR
JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES
ROOM 15 NORTH, STATE CAPITOL
P.O. BOX 8952
MADISON WI 53708-8952

RE: EMERGENCY RULE renumbering and amending ETF 20.25 (1) and creating ETF 20.25 (1) (b) regarding the distribution to annuitants of the total amount distributed from the transaction amortization account to the annuity reserve under the non-statutory provisions of 1999 Wis. Act 11.

Effective date of emergency rule: December 31, 1999.

Present expiration date (1st 60 day extension): July 28, 2000.

Dear Senator Robson and Representative Grothman:

I am writing on behalf of the Department of Employee Trust Funds and the Employee Trust Funds Board, Teachers Retirement Board and Wisconsin Retirement Board to request that the effective period of the emergency rule be extended for 60 days, as authorized by Wis. Stat. § 227.24 (2) (a). One previous 60-day extension was requested and granted.

I enclose a copy of my previous request for an extension, dated April 26, 2000, which explains in detail the reasons the emergency rule was promulgated. Since then, the Supreme Court has agreed to take original jurisdiction in *WPPA v. Lightbourn*, Case No. 99-3297-OA, the action challenging the constitutionality of certain features of 1999 Wis. Act 11. The Court has established a briefing schedule through late August and directed that oral argument be scheduled in October. The implementation of Acts 11 and the companion Act 12 remain enjoined.

Since the maximum extension of the emergency rule which may be granted is for 60 days, until September 26, 2000, it appears to be a foregone conclusion that the emergency rule will expire before the Supreme Court decides whether 1999 Wis. Acts 11 and 12 may be implemented, in whole or part. Nevertheless, the DETF requests that the 60-day extension be granted. This will

allow the Department to explore one last time whether the Senate Labor Committee might be willing to reconsider its action on Clearinghouse Rule 00-011, the permanent version of this emergency rule, and allow the DETF to promulgate the rule prior to the Supreme Court decision.

As DETF pointed out in the original request for an extension, and at the hearing on that request, the injunction issued by the Supreme Court in Case No. 99-3297-OA does not bar this rule. The injunction was issued at DETF's request and DETF and the Court anticipated the need to make preparations to implement Act 11, including rule-making. The injunction does not ban this rule, its extension, or promulgation of its permanent version. The Supreme Court granted a preliminary injunction against implementing Act 11 in its order dated December 29, 1999, but included the following qualification:

Notwithstanding the foregoing, the petitioners [*ETF Board, DETF and Secretary*] are not enjoined from taking such contingent and preparatory measures towards implementation of this legislation as they deem appropriate in their discretion and consistent with their fiduciary and other duties and responsibilities for administering the terms of the public employe trust fund. Any question raised by either party regarding the propriety of any particular contingent and preparatory measure toward implementation shall immediately be brought before this court for resolution;

Employe Trust Funds Board, et al. v. Lightbourn, et al., No. 99-3297-OA, Supreme Court Order dated December 29, 1999, page 2.

The public hearing on the identical permanent version of this emergency rule was held in February 2000, after the preliminary injunction was in effect. No party to the ongoing litigation expressed any objections to the rule-making, either in the hearing on the rule or to the Supreme Court. Copies of the first request for extension were also sent to counsel for each of the remaining parties to the litigation. No party objected to the extension or raised questions about the rule-making with the Court.

We also strongly believe that DETF has the statutory authority to promulgate this rule. The DETF's authority to promulgate this rule does not depend on Act 11. Rather, the authority for this rule is found in the Wis. Stat. § 40.27 (2), which was not affected in any way by Act 11 or 12. Wis. Stat. § 40.27 (2), which provides in applicable part:

(2) FIXED ANNUITY RESERVE SURPLUS DISTRIBUTIONS.
Surpluses in the fixed annuity ... shall be distributed by the board if the distribution will result in at least a 2% increase in the amount of annuities in force, on recommendation of the actuary, as follows:

(a) The distributions shall be expressed as percentage increases in the amount of the monthly annuity in force, ...

(b) Prorated percentages based on the annuity effective date may be applied to annuities with effective dates during the calendar year preceding the effective date of the distribution, **as provided by rule**, but no other distinction may be made among the various types of annuities payable from the fixed annuity reserve. *[Emphasis added.]*

Under that authority, the Employee Trust Funds Board promulgated a rule establishing the effective date of distribution and the proration of dividends with respect to annuities effective during the preceding year. Wis. Admin. Code § ETF 20.25 (1), which has been in effect unchanged since May 1, 1984, provides:

A fixed annuity dividend, as recommended by the actuary and approved by the chair of the employe trust funds board and the department's secretary, shall be distributed based on each December 31 valuation as specified in s. 40.27 (2), Stats. The dividend shall be effective on the April 1 following the valuation date and shall apply to fixed annuities effective on or prior to the date of the valuation. As authorized under s. 40.27 (2) (b), Stats., **different percentages shall be determined for annuities effective for less than a full year on the valuation date. The percentages shall be determined by multiplying the number of full months the annuity was in force times the percentage change applicable to annuities effective for the full year, dividing the result by 12 and rounding the answer to the nearest tenth of a percent. No increase shall be applied to any annuity for which the resulting increase would be less than one percent.** *[Emphasis added].*

In 1999 Wis. Act 11, § 27 (1) (a) is a non-statutory provisions that mandate a distribution of \$4,000,000,000 from the Transaction Amortization Account (TAA) in the Public Employe Trust Fund to the reserves and accounts of the fixed retirement investment trust, on December 31, 1999. The transfer has not occurred, due to the injunction against implementation. Section 27 (1) (d) provides that the total amount of the \$4,000,000,000 distributed to the annuity reserve "shall be distributed as provided under section 40.27 (2) of the statutes." Wis. Admin. Code § ETF 20.25 (1) applies to distributions under Wis. Stat. § 40.27 (2) and, as an administrative rule, has the force of law in Wisconsin.

Thus, it is clear that if the ETF Board does not promulgate a rule to the contrary, Wis. Admin. Code § ETF 20.25 (1) would control. It would require prorating the extraordinary annuity dividend mandated by Act 11, with respect to annuities which began during 1999. All the ETF

Board is attempting to do with this rule-making is to identify a particular situation in which the general rule of prorating annuity dividends would not apply. The negative monetary effect on annuitants who retired during 1999 is substantial.

As of December 31, 1999, the normal TAA recognition process (without the effects of Act 11) resulted in a credit to the fixed division of the annuity reserve which the ETF Board distributed as a 7.5% fixed division annuity dividend, effective April 1, 2000. That dividend increase, as required by Wis. Admin. Code § ETF 20.25 (1), was prorated for annuities effective during 1999. Annuities effective after November 1, 1999, received no dividend at all. Annuities effective between January 2 and November 1, 1999, received prorated annuity dividends ranging from 1.3% to 6.9%.

DETF calculates that out of the \$4,000,000,000 taken from the TAA by Act 11, roughly \$1.6 billion will be credited to the annuity reserve. That amount, is sufficient to pay a dividend of 10.2% to all annuities in force as of April 1, 2000. Together with the normal 1999 year-end TAA recognition, the \$1.6 billion would provide an aggregate annuity dividend of 17.7% (i.e., the original 7.5% + 10.2% = 17.7%). If this aggregate dividend were prorated as provided in Wis. Admin. Code § ETF 20.25 (1), annuities effective after December 1, 1999, would receive nothing, and annuities effective between January 2 and December 1, 1999, would receive dividends ranging from 1.5% to 16.2%.

The ETF Board's rule-making attempted to make certain that if the \$4 billion transfer mandated by Act 11 occurred, all annuitants would receive a 10.2% dividend from that transfer, regardless of when they retired. The Board felt this was justified, because the special Act 11 dividend would result from the transfer of \$4 billion which has accumulated in the TAA over the past approximately 30 years. But for Act 11, the \$4 billion would have remained in the TAA and been distributed through the normal annual recognition process. Part of those funds would have paid for future annuity dividends, over many years to come. Instead, Act 11 directs the \$1.6 billion transferred into the Annuity Reserve to be paid out in a single dividend, effective April 1, 2000. If annuities effective in 1999 receive only a prorated special dividend, then these annuitants will be deprived of a portion of the earnings of the Public Employee Trust Fund that would otherwise have affected their annuities as of April 1, 2001, and in future years.

Without this rule-making, assuming Act 11 survives legal challenges, the 6,281 annuitants whose annuities began in 1999 could potentially lose annuity dividend increases worth an aggregate total of \$427,970 dollars per month. That loss continues for the rest of the annuitant's life and for the duration of the annuity.

The ETF Board attempted to avoid this result by duly promulgating an administrative rule to solve the problem, first as an emergency rule then as a permanent rule. It was the Board's intention to have this "non-proration" rule in effect at all times until the distribution actually occurred (or until the Act 11 transfer was ruled unconstitutional and the distribution became a moot point).

It is the DETF's position that it possesses the authority to promulgate both this emergency rule and its identical permanent version. The authority for the rule-making is not in Act 11, but in the pre-existing Wis. Stat. § 40.27 (2). Even if that were not the case, by its own terms, all provisions of 1999 Wis. Act 11, became effective between the day after its publication on December 29, 1999, and January 1, 2000. See Act 11, § 29, concerning effective dates. Implementation of the Act by the Department of Employee Trust Funds and its Secretary, the ETF Board, the Department of Administration and the State Treasurer (the original parties) is enjoined (but the injunction includes a reservation that permits the ETF Board to take preparatory steps to implement the Act, as the Board deems necessary).

Although the provisions of Act 11 which necessitate this rule-making are non-statutory, it is perhaps worth noting that the concept of promulgating an administrative rule for the purpose of interpreting a new statute not yet in effect, is not a new idea. The concept is already established in Wisconsin statutes. Wis. Stat. § 227.11 (2) (d) expressly provides:

An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

In accord with Wis. Stat. § 227.24 (2) (am), I am providing a copy of this letter to the presiding officer of each house of the Legislature and to the Senate Committee on Labor and the Assembly Committee on Government Operations, the committees to which the final draft report on the permanent rule was referred. I am also providing copies to the attorneys representing parties in the ongoing litigation concerning Act 11.

Sincerely,



Eric Stanchfield
Secretary

cc: Representative Steve Wieckert, Chair, Assembly Committee on Government Operations
Senator James Baumgart, Chair, Senate Committee on Labor
Assembly Speaker Scott R. Jensen
Senate President Fred A. Risser
Attorney Anne U. Smith, representing respondents Lightbourn and Voight
Attorney Anthony Sheehan, WEAC
Attorney William Haus, representing SEA
Attorney Lester Pines, representing WPPA



STATE OF WISCONSIN

Department of Employee Trust Funds

Eric O. Stanchfield
Secretary
801 West Badger Road
P.O. Box 7931
Madison, WI 53707-7931

April 26, 2000

HONORABLE JUDITH ROBSON
SENATE CO-CHAIR
JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES
ROOM 15 SOUTH, STATE CAPITOL
P.O. BOX 7882
MADISON WI 53707-7882

HONORABLE GLENN GROTHMAN
ASSEMBLY CO-CHAIR
JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES
ROOM 15 NORTH, STATE CAPITOL
P.O. BOX 8952
MADISON WI 53708-8952

RE: EMERGENCY RULE renumbering and amending ETF 20.25 (1) and creating ETF 20.25 (1) (b) regarding the distribution to annuitants of the total amount distributed from the transaction amortization account to the annuity reserve under the non-statutory provisions of 1999 Wis. Act 11.

Effective date of emergency rule: December 31, 1999.

Present expiration date (150 days): May 29, 2000.

Dear Senator Robson and Representative Grothman:

I am writing on behalf of the Department of Employee Trust Funds and the Employee Trust Funds Board, Teachers Retirement Board and Wisconsin Retirement Board to request that the effective period of the emergency rule be extended for 60 days, as authorized by Wis. Stat. § 227.24 (2) (a). No previous extension has been requested.

The emergency rule was promulgated to address a concern created by 1999 Wisconsin Act 11. Gains and losses of the Trust Fund's investments, including "paper" gains and losses resulting from changes in market value, are accumulated in the Transaction Amortization Account (TAA). At the end of each year, 20% of the TAA balance is "recognized" and distributed in the form of "effective rate" interest crediting to various accounts and reserves in the fixed retirement investment trust, including the Annuity Reserve, as provided by Wis. Stat. § 40.04 (3) (a). The funds credited to the Annuity Reserve are then subject to distribution to annuitants under Wis. Stat. § 40.27 (2) in the form of a post-retirement adjustment to annuities which is known as an "annuity dividend." Annuity dividends are paid in the form of a percentage increase in the annuity in force, based upon the annual December 31 actuarial valuation. Annuity dividends are

effective April 1 of the following year (and first appear on the May 1 annuity checks). If an annuity began during the previous year, the amount of the annuity will be prorated, based upon how many full months the annuity was in effect. If the prorated percentage increase would be less than 1%, no increase will occur. All this is provided in Wis. Admin. Code § ETF 20.25 (1).

Act 11 calls for \$4 billion to be transferred out of the TAA, in addition to the normal 20% recognition. This will result in \$1.608 billion being transferred from the TAA to the Annuity Reserve. A non-statutory provision, Section 27 (1) (d) of Act 11, directs that these funds be distributed as provided for regular annuity dividends. Thus, unless the existing Wis. Admin. Code § ETF 20.25 (1) is revised, this extraordinary dividend will also be prorated with respect to annuities first effective in 1999.

As noted in the Finding of Emergency included in the emergency rule:

There are approximately 102,000 annuitants of the Wisconsin Retirement System, of whom about 80% reside in the State of Wisconsin. The Department of Employee Trust Funds estimates that up to 7,000 public employees covered by the Wisconsin Retirement System will retire and take annuity benefits effective during 1999.

WRS participants who retired during 1999 are not eligible to have their retirement benefits calculated using the higher formula factors for pre-2000 service which are provided by the treatment of Wis. Stat. § 40.23 (2m) (e) 1. through 4. by 1999 Wisconsin Act 11.

If the existing administrative rule mandating proration is not revised, then the distribution of the funds transferred into the annuity reserve by Act § 27 (1) (a) of 1999 Wisconsin Act 11 will be prorated with respect to annuities with effective dates after December 31, 1998, and before January 1, 2000. The extraordinary transfer of funds from the Transaction Amortization Account (TAA) mandated by 1999 Wisconsin Act 11 causes funds, which would otherwise have remained in the TAA to be recognized and fund annuity dividends in later years, to instead be transferred into the annuity reserve in 1999 and paid out as an annuity dividend effective April 1, 2000. Normally, annuities effective during 1999 would receive only a prorated dividend. If this occurred with respect to this extraordinary distribution, then annuitants with annuity effective dates in 1999 would be deprived of a portion of the earnings of the Public Employee Trust Fund that would otherwise have affected their annuities as of April 1, 2001 and in subsequent years.

Promulgation of an emergency rule was the only available option for revising the effect of Wis. Admin. Code § ETF 20.25 (1) before December 31, 1999.

The DETF and Employe Trust Funds Board have been proceeding as rapidly as possible with promulgation of a permanent rule, but it will not be possible to have that rule in effect before the expiration of the emergency rule. Act 11 was passed on October 6, 1999. At their next meetings (on December 9 and 10, 1999) the Employe Trust Funds Board, Teachers Retirement Board, and Wisconsin Retirement Board, each approved both a scope statement for a permanent rule and the emergency rule. DETF published the emergency rule, with a delayed effective date of December 31, 1999. On January 13, 2000, the proposed permanent rule draft was received by the Legislative Council Staff, which issued its report on February 7, 2000.

The public hearing on both this emergency rule and the proposed permanent rule (Clearinghouse Rule #00-011) was held on February 11, 2000. The record was held open until 4:30 p.m. on Friday, February 25, 2000, to permit persons who were unable to attend the public hearing in person to submit written comments on the proposed rule. There was no opposition to the rule. Two recent retirees covered by the Wisconsin Retirement System each spoke in favor of the rule. Representatives of the Wisconsin Retired Educators Association, the State Engineering Association and the Wisconsin Professional Police Association all registered in favor of the rule. The only written comment on the rule received subsequently was a letter from the Wisconsin Retired Educators Association expressing support for the rule.

The final draft report on Clearinghouse Rule #00-011 was received by both the Assembly and Senate on March 16, 2000. It was assigned to the Senate Committee on Labor on March 21, 2000, and to the Assembly Committee on Government Operations on March 23, 2000. The Senate Committee on Labor held a public hearing on the rule on April 18, 2000. The Committee passed a motion unanimously that required the DETF to delay submission of the rule to the Revisor of Statutes for publication until the Wisconsin Supreme Court ruled on the validity of 1999 Wisconsin Act 11.

When the Supreme Court might modify the present preliminary injunction against implementation of Act 11 is unknown, nor is the timing and outcome of the pending legal challenges to Act 11. The intent of the requested extension is that the emergency rule's treatment of the extraordinary annuity dividend provided by Act 11 will be in effect continuously until the identical permanent rule becomes effective and leave no doubt as to the DETF's handling of the extraordinary Act 11 annuity dividend in the event provisions of Act 11 must be implemented. However, the inability to promulgate the permanent rule (CR # 00-011) due to recent action by the Senate Committee on Labor will increase the likelihood that the DETF will be required to request a further extension of the emergency rule to prevent a gap between the expiration date of the emergency rule and the effective date of the permanent rule.

The ETF Board, DETF and I requested a preliminary injunction barring implementation of 1999 Wisconsin Acts 11 and 12 from the Supreme Court when we filed our petition for original jurisdiction and requested to have the petition stand as a complaint seeking declaratory judgment. The Supreme Court granted the preliminary injunction in its order dated December 29, 1999, but included the following:

Notwithstanding the foregoing, the petitioners [*ETF Board, DETF and Secretary*] are not enjoined from taking such contingent and preparatory measures towards implementation of this legislation as they deem appropriate in their discretion and consistent with their fiduciary and other duties and responsibilities for administering the terms of the public employe trust fund. Any question raised by either party regarding the propriety of any particular contingent and preparatory measure toward implementation shall immediately be brought before this court for resolution;

Employe Trust Funds Board, et al. v. Lightbourn, et al., No. 99-3297-OA, Supreme Court Order dated December 29, 1999, page 2.

As noted above, the public hearing on the identical permanent version of this rule was held in February 2000, after the preliminary injunction was in effect. No party to the ongoing litigation expressed any objections to the rulemaking, either in the hearing on the rule or to the Supreme Court. Copies of this request for extension are also being sent to counsel for each of the remaining parties to the litigation. In the event the requested extension is not granted, some of the parties to the litigation may wish to raise with the Court the impact on their clients. A gap between the date the emergency rule ceases to be in effect and the date the identical permanent rule first becomes effective might create some uncertainty among 1999 annuitants as to the handling of their Act 11 extraordinary dividend if the Act is upheld.

In accord with Wis. Stat. § 227.24 (2) (am), I am providing a copy of this letter to the presiding officer of each house of the Legislature and to the Senate Committee on Labor and the Assembly Committee on Government Operations, the committees to which the final draft report on the permanent rule was referred.

Sincerely,

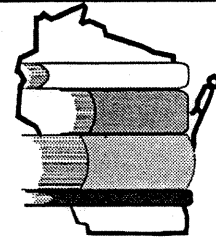


Eric Stanchfield
Secretary

cc: Representative Steve Wieckert, Chair, Assembly Committee on Government Operations
Senator James Baumgart, Chair, Senate Committee on Labor
Assembly Speaker Scott R. Jensen
Senate President Fred A. Risser
Attorney Anne U. Smith, representing respondents Lightbourn and Voight
Attorney Anthony Sheehan, WEAC
Attorney William Haus, representing SEA
Attorney Lester Pines, representing WPPA



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SELECTIVE LIST OF RECENT ACQUISITIONS — JUNE/JULY 1999

<http://www.legis.state.wi.us/lrb/pubs/99ra4.pdf>

This is a list of the Library's new books, articles, Wisconsin agency documents and other resources on topics of current concern in state government. Most items are available for 4-week loan.

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LRB PUBLICATIONS

<http://www.legis.state.wi.us/lrb/pubs/index.html>

Please refer to the last page of this list for titles of LRB publications.

AN ISSUE OF CURRENT INTEREST — CRIMINAL JUSTICE ISSUES

The following represent our latest acquisitions on issues relating to criminal justice. Our collection contains many other publications on these subjects: Courts – Procedures (345), Crime (346), Criminals (346.6), and Juvenile courts (347.172). Clippings are available for use at the Bureau.

“Juvenile Crime and Justice Legislation: 1998”, by the National Conference of State Legislatures, *State Legislative Report*, December 1998. 347.172/N211b

Juvenile Felony Defendants in Criminal Courts: State Court Processing Statistics, 1990-94, by the U.S. – Bureau of Justice Statistics. 1998. 347.172/X25

“Prevention Works: On the Front Lines with CSAP Director Karol Kumpfer; The Promise of Juvenile Drug Courts; Reducing Underage Drinking”, by the U.S. – Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice*, December 1998. 347.172/X26

Recidivism of Adult Felons: A Program Evaluation Report, by the Minnesota – Office of Legislative Auditor. 1997. 346.6/M6

“State and Local Criminal Justice Spending: Recent Trends and Outlook for the Future”, by Deborah A. Ellwood and Donald J. Boyd, *State Fiscal Brief*, February 1999. 345/EL5

“State Crime Legislation: 1998”, by the National Conference of State Legislatures, *State Legislative Report*, November 1998. 346.9/N212b

NOTEWORTHY NEW PUBLICATIONS

The Death Penalty: An American Citizen's Guide to Understanding Federal and State Laws, by Louis J. Palmer, Jr. 1998. 365.48/P18. *Comprehensively examines the differences among death penalty systems throughout the United States.*

Ghosts From the Nursery: Tracing the Roots of Violence, by Robin Karr-Morse and Meredith S. Wiley. 1997. 347.17/K14. *Cutting to the heart of the trend of violence committed by children, this book gives startling new evidence that violent behavior is fundamentally linked to abuse and neglect in the first two years of life.*

The History of Wisconsin, Volume IV: The Progressive Era, 1893-1914, by John D. Buenker. 1998. 329.8/B86. *The final part of the six volume set, The History of Wisconsin.*

Kids Count Data Book: State Profiles of Child Well-Being, by the Annie E. Casey Foundation. 1999. 347.17/C26. *A national state-by-state effort to track the status of children in the United States.*

Principle-Centered Leadership, by Stephen R. Covey. 1991. 331.852/C83. *A long-term, inside-out approach to developing people and organizations.*

When Government Was Good: Memories of a Life in Politics, by Henry S. Reuss. 1999. 328.144/R31. *Provides anyone interested in public life with insights of Reuss' experiences, beliefs and ideas for addressing the problems of the 21st century.*

SITSEEING: INTERNET SITES OF INTEREST

[If you know of an interesting site you would like to share, please contact: marian.rogers@legis.state.wi.us]

Address Directory—Politicians of the World <http://www.trytel.com/~aberdeen/>

Addresses, phone, fax and e-mail for prime ministers, presidents, monarchs and provincial governors of 194 countries.

Cassandra Project [Y2K] <http://cassandraproject.org/home.html>

A not-for-profit organization concerned with Y2K features a well-organized homepage, no advertising and easy-to-read graphics. Provides a good overview of the problem, advocating preparedness but not panic.

National Gambling Impact Study Commission . . . <http://www.ngisc.gov>

A federal commission established in 1996 to conduct a comprehensive study of the impacts of gambling. Final report was issued on June 19, 1999 — <http://www.ngisc.gov/reports/finrept.html>

REFERENCE PUBLICATIONS

[Reference (Ref.) publications do not circulate; most are located on 2nd floor, Reference Collection.]

CSG State Directory II: Legislative Leadership, Committees and Staff, 1999, by the Council of State Governments. Ref./354.3/C83c/pt.2

Membership Directory and Handbook: 1999, by the Wisconsin Library Association. Ref./027/W75e

The Municipal Year Book: 1999, by the International City/County Management Association. Ref./352.1/M922

State Reference Publications: A Bibliographic Guide to State Blue Books, Legislative Manuals and Other General Reference Sources, 1998-99, by the Government Research Service. Ref./328.3/G74

NEW AUDIO-VIDEO ITEMS

[The loan period for CD-ROMs, audio and videocassettes is limited to seven days.]

Common Core of Data (CCD): School Years 1991-92, [CD-ROM], by the U.S. – National Center for Education Statistics. 1998. 370.2/X21

Medicaid, CHIP, and Special Needs Kids [Guide and Audiotape], by the National Conference of State Legislatures – Forum for State Health Policy Leadership. 1999. 2 pts. Part 1, audiotape guide; part 2, audiotape. 368.6/N21i

State of New Jersey Budget [CD-ROM], by the New Jersey – Governor and the New Jersey – Department of the Treasury – Office of Management and Budget. 1998-99. 336.121/N46

What Works to Get Kids to Enroll? Social Marketing and CHIP [Guide and Audiotape], by the National Conference of State Legislatures – Forum for State Health Policy Leadership. 1999. 2pts. Part 1, audiotape guide; part 2, audiotape. 368.6/N21j

Wisconsin: Celebrating People, Place and Past [Teacher Guide and CD-ROM], by the Wisconsin – Educational Communications Board. 1998. 2 pts. Part 1, CD-ROM (2 copies; copy 1 does not run on Windows NT); part 2, teacher guide. 977.5/W7y

Worm Bin Creatures Alive Through a Microscope [Guide and Videotape for Composting With Earthworms], by Warren A. Hatch. 1998. 2pts. Part 1, videotape; part 2, guide. 374.35/H28

Wormania! [Teacher's Guide and Videotape for Composting With Earthworms], by Mary Appelhof and others. 1995. 2pts. Part 1, teacher's guide; part 2, videotape. 374.35/Ap4

ACQUISITIONS BY SUBJECT

ACQUIRED IMMUNODEFICIENCY SYNDROME

HIV/AIDS Facts to Consider: 1999, by the National Conference of State Legislatures. 1999. 346.28/N211i

BUSINESS DEVELOPMENT

"Attracting Venture Capital for Business Start-Ups", by Catherine M. Gillman and Anne E. Ross, *Wisconsin Lawyer*, May 1999, pp. 14-17+. 341.14/W75/v.72, no.5

CHARTER SCHOOLS

The State of Charter Schools: National Study of Charter Schools, by the U.S. – Office of Educational Research and Improvement. 1999. 371/X5

CHILDREN

Chance and Choice in the Game of Life From [the Montana] Joint Oversight Committee on Children and Families, by the Montana – Legislative Services Division. 1998. 347.1/M76

CIVIL SERVICE

Of the People, By the People: Principles for Cooperative Civil Service Reform, by the California – Little Hoover Commission. 1999. 351.2/C1

COMPUTERS AND COMMERCE

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FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule # HSS 122.10

Subject

RESOURCE ALLOCATION PROGRAM: DISTRIBUTION OF 3 CLOSED NURSING HOME BEDS TO A NURSING HOME THAT SERVES ONLY VETERANS

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.435 (4) (b), (o)

Assumptions Used in Arriving at Fiscal Estimate:

This rulemaking order adds a new section to the Department's rules for operation of the Resource Allocation Program (RAP) under subch. II of ch. 150, Stats., to permit the one-time distribution, upon application, of 3 closed nursing home beds to a nursing home that serves only veterans.

The new s. HSS 122.10 will not affect the expenditures or revenues of local governments because local governments do not administer RAP and no local government nursing home is directly affected by the new rules.

The Wisconsin Veterans Home at King, a state-operated facility, has 4 nursing homes on its grounds that are at almost 100% capacity and has a long waiting list of elderly veterans wanting to be admitted. Veterans Home managers have decided to close a 3 bed hospital unit at the Home, and would like to add 3 nursing home beds in that space. However, there is a statewide limit on nursing home beds and no process for converting hospital beds to nursing home beds. Within the statewide bed limit the Department under ch. HSS 122 rules may distribute closed nursing home beds. The criteria for distribution are set out in the rules. A special process and some different criteria are needed and are set out in this rulemaking order that will permit the distribution of 3 closed nursing home beds to a home serving only veterans that already has the space for the beds.

The new rules will increase costs to the Medical Assistance (MA) program. If the 3 beds are distributed to the Wisconsin Veterans Home at which the MA part of the composite per diem cost for a bed is \$59.42, the increase in state MA costs would be about \$65,065 a year (\$59.42 x 365 x 3). This cost would be funded \$26,800 GPR and \$38,300 FED. On the other hand, revenues would increase for the Veterans Home by that amount plus the difference after that amount is deducted from the composite per diem cost x 365 x 3.

Long-Range Fiscal Implications:

Prepared By: / Phone # / Agency Name

DHFS/Connie Miller, 266-0999

Authorized Signature Telephone No.

John Klesow, 266-9622

Date

7-27-99

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

1999 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #
INTRODUCTION #

Admin. Rule #
HFS 122.10

Subject

RESOURCE ALLOCATION PROGRAM: DISTRIBUTION OF 3 CLOSED NURSING HOME BEDS TO A NURSING HOME THAT SERVES ONLY VETERANS

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$ -	\$ -
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations	\$65,065	-
TOTAL State Costs by Category	\$ 65,065	\$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$ 26,800	\$ -
FED	\$38,300	-
PRO/PRS		-
SEG/SEG-S		-
State Revenues Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$ -	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$ -	\$ -

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 65,065	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Prepared By: / Phone # / Agency Name DHFS/Connie Miller 266-0999	Authorized Signature/Telephone No. John Kiesow 266-9622	Date 7-27-99
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