

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 4/18/00

BILL NO. _____
OR
SUBJECT _____

CR 00-011, 00-021, 00-022

David Austin
(NAME)

(Street Address or Route Number)

(City and Zip Code)

Sen. Robson
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information
only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 4-18-00

BILL NO. _____
OR
SUBJECT CR # 011, 021, 022

Pam Hennings, Shelly Schueller
& Linda Green

(NAME)

801W Badger Rd
(Street Address or Route Number)

Madison

(City and Zip Code)

Dept. of Employee Trust Funds
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information
only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

Vote Record

Senate - Committee on Labor

Date: 4-18-00
Moved by: Sen Breske Seconded by: Sen Zien
Clearinghouse Rule: 00-011, 00-021, 00-022
Appointment: _____
Other: _____

AB: _____ SB: _____
AJR: _____ SJR: _____
AR: _____ SR: _____

A/S Amdt: _____
A/S Amdt: _____ to A/S Amdt: _____
A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for: see motion

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

Sen. Jim Baumgart, Chair
Sen. Russell Decker
Sen. Roger Breske
Sen. David Zien
Sen. Margaret Farrow

	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Sen. Jim Baumgart, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Russell Decker	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Roger Breske	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. David Zien	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Margaret Farrow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>5</u>	<u>0</u>	<u>0</u>	<u> </u>

Motion Carried

Motion Failed

CLEARINGHOUSE RULES 00-011,
00-021 and 00-022

MOTION

Moved by Senator _____, Seconded by Senator _____

THAT the Senate Labor Committee requests the Department of Employee Trust Funds to delay the submission of Clearinghouse Rules 00-011, 00-021 and 00-022 to the Revisor of Statutes for publication until the Wisconsin Supreme Court has ruled on the validity of 1999 Wisconsin Act 11; and

THAT, if the Department, on or before May 9, 2000, does not provide the Committee with a written assurance that it will submit Clearinghouse Rules 00-011, 00-021 and 00-022 to the Revisor for publication after the Court has ruled on the validity of Act 11, the rulemaking orders are objected to in their entirety pursuant to s. 227.19 (4) (d) 1, Stats.

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Laura D. Rose,
Interim Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 00-011

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. Although the analysis to the rule clearly provides citations to the statutory authority for the rule and the statutes interpreted by the rule, a simple statement of these items should be included in the plain language analysis. [See s. 1.02 (2), Manual.]

b. In s. ETF 20.25 (1) (b), the notation ", Stats.," should be inserted following the statutory cross-reference.

Response to Legislative Council Staff Recommendations:

Both recommendations by the Legislative Council Staff have been implemented. Immediately preceding the analysis of the rule, DETF has added brief citations to the statutes which authorize this rulemaking. In addition, a separate, one line citation to the non-statutory provision of Act 11 affected by the rule is also added.

In proposed § ETF 20.25 (1) (b), the cross-reference to a statute has been corrected to read: "... s. 40.04 (3) (a), Stats., or otherwise."

Board Authorizations for Promulgation:

The Employee Trust Funds Board, at its meeting on March 10, 2000, and both the Teachers Retirement and Wisconsin Retirement Boards, at their respective meetings on March 9, 2000, duly approved this final draft report on Clearinghouse Rule #00-011 for submission to the Legislature and for promulgation.

Respectfully Submitted,

DEPARTMENT OF EMPLOYEE TRUST FUNDS



Eric O. Stanchfield, Secretary
Wisconsin Department of Employee Trust Funds

WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Laura D. Rose, Interim Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-011

AN ORDER to renumber and amend ETF 20.25 (1); and to create ETF 20.25 (1) (b), relating to distribution to annuitants of the total amount distributed from the transaction amortization account to the annuity reserve under the nonstatutory provisions of 1999 Wisconsin Act 11.

Submitted by **DEPARTMENT OF EMPLOYE TRUST FUNDS**

01-13-00 RECEIVED BY LEGISLATIVE COUNCIL.

02-07-00 REPORT SENT TO AGENCY.

RS:GAA:jal;rv

August 25, 2000

TO: Members of the Senate Labor Committee

Senator Russell Decker Senator David Zien
Senator Roger Breske Senator Margaret Farrow

FROM: Senator Jim Baumgart, Chair

Re: Clearinghouse Rule 00-011

The following rule was referred to the Committee on August 2, 2000.

Clearinghouse Rule 00-011

Relating to distribution to annuitants of the total amount distributed from the transaction amortization account to the annuity reserve under the nonstatutory provisions of 1999 Wisconsin Act 11.

Submitted by the Department of Employee Trust Funds.

The committee requested modification of this rule in April. However, there were some problems with the wording in the modification and the Department of Employee Trust Funds recalled the rule and resubmitted it with a germane modification changing the effective date of the rule.

Attached is a copy of the rule as resubmitted. The Department discussed this germane modification with the Legislative Council. They see no problems with the rule as resubmitted.

If you have any questions or want a hearing on the rule, please advise immediately. Dan Fernbach of the Legislative Council can answer any questions you have regarding the rule.



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: April 17, 2000

TO: SENATOR JAMES BAUMGART, CHAIRPERSON, SENATE COMMITTEE
ON LABOR

FROM: Dan Fernbach, Senior Staff Attorney

SUBJECT: Committee Options on Clearinghouse Rules

You have scheduled a public hearing for Tuesday, April 18, 2000, on three sets of Clearinghouse Rules (CHRs 00-011, 00-021 and 00-022), submitted by the Department of Employee Trust Funds (DETF), relating to the implementation of 1999 Wisconsin Act 11.

As you know, Act 11, among other things, provides a higher Wisconsin Retirement System (WRS) formula factor for creditable service performed prior to January 1, 2000. According to DETF, the above-cited rule-making orders are necessary:

1. To determine how certain types of creditable service are allocated as pre-2000 or post-1999 service (CHR 00-022);
2. To provide equitable treatment for annuitants who retire in 1999 (CHR 00-011); and
3. To implement the Act's provisions that provide for a limited reopening of the Variable Trust Fund (CHR 00-021).

As noted in DETF's analysis of CHR 00-021, implementation of Act 11 *was enjoined* by the courts on December 29, 1999 until the act is reviewed by the Wisconsin Supreme Court to determine its validity. However, the Department intends to promulgate and submit the rules for publication at this time but repeal them at a later date if Act 11 is not upheld by the Supreme Court.

At an executive session following the Labor Committee's scheduled April 18 public hearing on the proposed rules, if the members believe that the rules should not be promulgated until the Supreme Court upholds the provisions of Act 11, the committee could take any of the following actions:

1. Vote to *formally object* to the proposed rules pursuant to s. 227.19 (4) (d), Stats.
2. Same as above, *unless* DETF provides the committee with a *written assurance* prior to the end of its review period that it will not submit the rules to the Revisor of Statutes for publication until the Supreme Court has ruled on the validity of Act 11.
3. Request the department to withdraw the proposed rules but adopt them as *emergency rules* at a later date if and when Act 11 is upheld by the Supreme Court.

Finally, the committee could *take no action*, which would permit the proposed rules to take effect without delay on the first day of the month following publication.

DF:jal;rv



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:

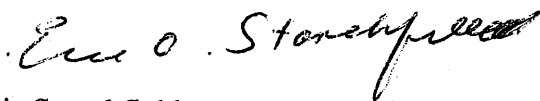
Notwithstanding the foregoing, the petitioners [*ETF Board, DETF and Secretary*] are not enjoined from taking such contingent and preparatory measures towards implementation of this legislation as they deem appropriate in their discretion and consistent with their fiduciary and other duties and responsibilities 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



STATE OF WISCONSIN

Department of Employee Trust Funds

Eric O. Stanch
Secretary
801 West Badger Road
P.O. Box 7882
Madison, WI 53707-7882

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:

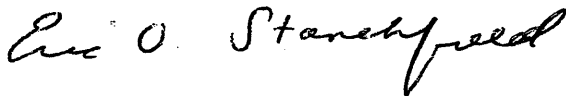
Senator Baumgart
April 26, 2000
Page 2

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



STATE OF WISCONSIN

AUG 04 2000

Department of Employee Trust Funds

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

August 2, 2000

Honorable James Baumgart
State Senate
Chair, Senate Committee on Labor
306 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Honorable Steve Wieckert
State Assembly
Chair, Assembly Committee on Government Operations
9 North, State Capitol
P.O. Box 8953
Madison, WI 53708

RE: Clearinghouse Rule (CR) #00-011 relating to the annuitant dividend distribution

Dear Senator Baumgart and Representative Wieckert:

I am writing to request the Senate Committee on Labor and Assembly Committee on Government Operations waive jurisdiction over the recently referred proposed rule, CR #00-011 on the annuitant dividend distribution, prior to expiration of the Committees' 30-day review period pursuant to s. 227.19 (4) (c). CR #00-011 was recalled and resubmitted for review before your Committees due to a change in the effective date provision in the rule.

As you will recall, the Department of Employee Trust Funds (DETF) submitted a proposed permanent rule through the normal administrative rule promulgation process in March 2000. Due to concerns raised about the statutory authority of the rule by Senator Judy Robson, Co-Chair of the Joint Committee for Review of Administrative Rules (JCRAR), the Senate Committee on Labor held a public hearing on April 18, 2000. The Committee passed a motion that required the DETF to delay submission of the rule to the Revisor of Statutes Bureau for publication until the Wisconsin Supreme Court ruled on the validity of 1999 Wisconsin Act 11. The DETF was also asked and further provided a written assurance to the Senate Committee on Labor (copy attached dated April 26, 2000) that it should submit the rule to the Revisor for publication after the Court has ruled on the validity of Act 11.

Since that assurance was provided by DETF to the Senate Committee on Labor on the permanent rule, the JCRAR held two public hearings on our emergency rule on the annuitant dividend distribution, first effective on December 31, 1999. At both hearings, May 10 and July 25, 2000, the JCRAR adopted a motion extending Emergency Rule ETF 20.25 (1) on a vote of 9-1 and 7-0, respectively.

Honorable James Baumgart and Steve Wieckert
August 2, 2000
Page 2

In recent discussions between our legal counsel, Legislative Council staff, Senator Robson and Senator Baumgart, it was determined that a change in the effective date of the proposed permanent rule should remove concerns raised by Senator Robson and the Senate Committee on Labor regarding statutory authority of the rule. The change in the effective date clearly ties the proposed rule to the implementation of 1999 Wisconsin Act 11. The effective date of the proposed rule is modified as follows:

This rule shall take effect on the later of the following dates: (1) the first day of the month commencing after the date of publication as provided by Wis. Stats. § 227.22 (2) (intro.), or (2) ~~the expiration of the emergency rule promulgated to be effective on December 31, 1999, which also renumbered and amended ETF 20.25 (1) and created ETF 20.25 (1) (b), including any extensions granted~~ the date of a Supreme Court decision or order in *Wisconsin Professional Police Association, Inc., et al. v. Lightbourn, et al.*, Case No. 99-3297-OA, which permits implementation of 1999 Wisconsin Act 11, § 27 (1) (a) and (d).

As stated in testimony before the JCRAR and Senate Committee on Labor, the DETF Board's intent since Act 11 became law and then enjoined by the Court was to have the annuitant dividend distribution rule in effect at all times until the distribution actually occurs or until the Court rules that portion of Act 11 unconstitutional. There are 6,281 annuitants whose annuities will be affected depending upon the action by the Court. If Act 11 is found constitutional and the proposed rule is in place, it will allow those annuitants retiring in 1999 to receive the full annuitant dividend based upon the portion of funds credited from the transaction amortization account (TAA) to the annuity reserve. If the rule is not in place, those same annuitants could 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.

If the Senate Committee on Labor and the Assembly Committee on Government Operations are willing to waive their 30-day review period of our rule, then we intend to publish the annuitant dividend distribution rule with an effective date of October 1, 2000. Our extended emergency rule expires on September 25, 2000, unfortunately leaving a gap before the new rule can become effective. However, waiver of the review period would still allow the permanent rule to become effective before any action by the Court as the Court scheduled oral arguments on *WPPA v. Lightbourn* for October 4, 2000.

Thank you for your consideration of this request. If you have any questions, please don't hesitate to contact me directly at 266-0301 or Pam Henning, Director of Legislation and Planning, at 267-2929.

Sincerely,



Eric O. Stanchfield
Secretary

Enclosure

cc: Senator Judith Robson

Eskeitz, Anne

From: Henning, Pamela
Sent: Thursday, August 03, 2000 3:37 PM
To: Eskeitz, Anne
Subject: CR 00-011 Letter

Anne,

Per our conversation, here is the letter requesting a waiver of the 30 day review period over our modified rule. The signed copy should be in the mail on Friday or Monday. Thanks for your help and consideration in this process.



Baumgart-Wieckert ltr
(00-011)...

Pam Henning, Director
Legislation and Planning
Department of Employee Trust Funds
(608) 267-2929
Fax (608) 267-0633
pamela.henning@etf.state.wi.us
<http://badger.state.wi.us/agencies/etf>

Eskeitz, Anne

From: Eskeitz, Anne
Sent: Friday, August 18, 2000 3:37 PM
To: Henning, Pamela
Subject: CR 00-011 - in Sen. Labor Committee

Did you ever get any notice that Rep. Wieckert is going to take any action on this rule so it can move out of that committee before the 30 days. I called the committee clerk but he didn't seem to know much about it and said he would look at the letter dated August 2 asking the committees to waive their 30-day review period. There is no sense in our Sen. committee doing a paper ballot if the Assembly Committee is not going to do anything?

Anne Eskeitz, Committee Labor Committee
Sen. Jim Baumgart, Chair
Tel. 266-2056



STATE OF WISCONSIN

Department of Employee Trust Funds

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

March 16, 2000

THE HONORABLE FRED A RISSER
PRESIDENT OF THE SENATE
C/O DONNA DOYLE
SENATE JOURNAL AND RECORDS
ONE EAST MAIN STREET, SUITE 402
MADISON WI 53702

Re: Clearinghouse Rule #CR 00-011 to renumber and amend s. ETF 20.25 (1) and create s. 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 Wisconsin Act 11.

Dear Senator Risser:

In accordance with Wis. Stats. § 227.19 (2), I am enclosing a copy of this proposed rule in final draft form. The report required under Wis. Stats. § 227.19 (3) is also enclosed.

Please contact Pam Henning, Director of Legislation and Planning, at 267-2929 if you have any questions.

Sincerely,

Eric O. Stanchfield
Secretary

Enclosure

Agency Person to Be Contacted for Substantive Questions:

For information about this rule, please contact: David Stella, Administrator, Division of Retirement Services, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 267-9038.

Statement Explaining Need for Rule:

If the ETF Board takes no action to revise the existing administrative rule, then when the present emergency rule expires, any subsequent distribution of the funds transferred into the annuity reserve by Act § 27 (1) (a) of 1999 Wis. Act 11 would be prorated, with respect to annuities with effective dates after December 31, 1998, and before January 1, 2000. The pending litigation concerning 1999 Wis. Act 11 may not be resolved before the present emergency rule expires. The purpose of this rule-making is to make permanent the emergency rule-making approved by the DETF, ETF Board, Teacher Retirement and Wisconsin Retirement Boards.

This rule-making will permanently modify the existing administrative rule on prorating in accord with the emergency rule. As a result, all annuities will be increased by the same percentage, including annuities with effective dates after December 31, 1998 and before January 1, 2000, as a result of the transfer of funds mandated by 1999 Wis. Act 11, §27 (1) (a). This treatment of the transfer is, of course, conditional upon the applicable parts of the legislation withstanding review by the courts.

Analysis Prepared by Department of Employee Trust Funds

- Authority for rule:** Wis. Stat. §§ 227.24, 40.03 (2) (i), and 40.27 (2) (b)
- Legislation interpreted:** 1999 Wis. Act 11, § 27 (1) (d), a non-statutory provision concerning the distribution of certain funds transferred to the Annuity Reserve.

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). That

statutory subsection provides that surpluses in the fixed annuity reserve shall be distributed by the Employe 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.

Had the ETF Board taken no action, the same prorating would apply to annuities which became effective during 1999 with regard to the distribution of the funds transferred into the annuity reserve by 1999 Wis. Act 11, § 27 (1) (a). The ETF Board promulgated an emergency rule, effective on December 31, 1999, identical to this proposed rule. Both this proposed rule and the emergency administrative rule currently in effect provide that there will be no prorating of the distribution of the funds transferred into the annuity reserve as a result of 1999 Wis. Act 11. The same percentage increase will be applied to annuities in effect for the full year or in effect for only part of 1999.

In December 1999, the Employe Trust Funds Board and Department of Employe Trust Funds commenced litigation concerning the constitutionality of portions of 1999 Wis. Act 11, including the \$4 billion transfer, and the action is now pending before the Supreme Court. See *Employe Trust Funds Board, et al. v. Lightbourn, et al.*, Case No. 99-3297-OA. The Supreme Court issued a preliminary injunction against implementation of Act 11. This rule-making is part of contingency planning by the Department of Employe Trust Funds and ETF Board in case the Act, or parts of it, are approved by the courts and is not prohibited under the terms of the injunction. This rule-making shall not be construed as an endorsement of the transfer of funds from the TAA as mandated by Act 11.

As provided by Wis. Stat. § 227.24 (1) (c), the present emergency rule will expire on May 29, 2000, (150 days after its effective date) unless extended. It is the intention of the Department of Employe Trust Funds and ETF Board that if the \$4 billion transfer from the TAA is ultimately upheld by the courts and implemented, this rule will continue to control the treatment of the surplus in the annuity reserve which results from the extraordinary distribution mandated by Act 11 in the same manner as the emergency rule currently does. If an injunction or other court action delays the TAA transfer until after the extraordinary dividend would be paid, then any amounts which become payable to annuitants as a result of the Act and this rule will be calculated retroactive to the normal annual dividend dates.

**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYE TRUST FUNDS**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE 00-011

AN ADMINISTRATIVE 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.
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Fiscal Estimate:

The rule has no fiscal impact on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues. This rule itself has no anticipated state fiscal effect during the current biennium and no future effect on state funds, which do not include the Public Employe Trust Funds.

The costs of implementing an April 1, 2000, distribution to annuitants of funds transferred into the annuity reserve by the special TAA transfer mandated in this legislation were incorporated into the fiscal effect prepared for 1999 Assembly Bill 495. However, if the payment of the special dividend resulting from the extraordinary transfer from the TAA was to be delayed after April 1, 2000 – for example because of the present injunction or other court action, then previously unanticipated costs in distributing these funds will arise. If the \$4 billion distribution survives review by the courts, then additional payments would be owed to annuitants, some of whom may have died in the interim. DETF anticipates at least some administrative costs in locating, notifying and processing claims by estates or heirs of deceased annuitants, similar to the costs incurred in making the distribution required by the Supreme Court in *WRTA v. Employe Trust Funds Board*, 207 Wis. 2d 1, 558 N.W.2d 83 (1997). The exact amount of these costs will depend, in large part, on how long the litigation over this legislation remains before the courts and the mortality experience among the affected annuitants during that period.

Final Regulatory Flexibility Analysis:

This rule does not affect small businesses.

Text of Proposed Rule:

(BEGINNING OF RULE TEXT)

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), Stats., 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 the later of the following dates: (1) the first day of the month commencing after the date of publication as provided by Wis. Stat. § 227.22 (2) (intro.), or (2) the expiration of the emergency rule promulgated to be effective on December 31, 1999, which also renumbered and amended ETF 20.25 (1) and created ETF 20.25 (1) (b), including any extensions granted.

Explanation of Modifications as Result of Testimony at Public Hearing:

No modifications were made to the proposed rule as a result of testimony received at the public hearing.

List of persons appearing or registering for or against the rule:

A public hearing on both this proposed rule and the identical emergency rule now in effect was held on February 11, 2000, at 1:00 p.m. in Conference Room 2A at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin. The record of the hearing 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.

Mr. Roger Brumm of Middleton, Wisconsin, and Mr. John Schleisman of Madison, Wisconsin, both spoke in favor of the rule. Both described themselves as recent retirees covered by the Wisconsin Retirement System.

Jane Elmer, representing the Wisconsin Retired Educators Association, Melvin B. Sensenbrenner, representing the State Engineering Association, and Steven Urso, representing the Wisconsin Professional Police Association, all registered in favor of the rule.

The Wisconsin Retired Educators Association also wrote a letter, dated February 13, 2000, expressing that organization's support for the rule. A copy of this letter is located on the following page.



STATE OF WISCONSIN

Department of Employee Trust Funds

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

July 28, 2000

THE HONORABLE FRED A RISSER
PRESIDENT OF THE SENATE
C/O DONNA DOYLE
SENATE JOURNAL AND RECORDS
ONE EAST MAIN STREET, SUITE 402
MADISON WI 53702

Re: Clearinghouse Rule #CR 00-011

Dear Senator Risser:

Pursuant to s. 227.19 (4) (b) 4., I am recalling the proposed Clearinghouse Rule # 00-011 relating to the annuitant dividend distribution currently before the presiding officer of each house of the Legislature. The proposed rule will be resubmitted with a germane modification changing the effective date of the rule.

The effective date of the proposed rule will be modified as indicated below:

This rule shall take effect on the later of the following dates: (1) the first day of the month commencing after the date of publication as provided by Wis. Stat. § 227.22 (2) (intro.), or (2) ~~the expiration of the emergency rule promulgated to be effective on December 31, 1999, which also renumbered and amended ETF 20.25 (1) and created ETF 20.25 (1) (b), including any extensions granted~~ the date of a Supreme Court decision or order in *Wisconsin Professional Police Association, Inc., et al. v. Lightbourn, et al.*, Case No. 99-3297-OA, which permits implementation of 1999 Wisconsin Act 11, § 27 (1) (a) and (d).

The modification is necessary to make it clear that the proposed rule is tied to the implementation of 1999 Wisconsin Act 11.

In accordance with Wis. Stats. § 227.19 (2), I am resubmitting the proposed rule in final draft form to the presiding officer of each house of the Legislature. The report required under Wis. Stats. § 227.19 (3) is also enclosed. Please contact Pam Henning, Director of Legislation and Planning, at 267-2929 if you have any questions.

Sincerely,

Eric O. Stanchfield
Secretary

Enclosure

**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYE TRUST FUNDS**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE 00-011

AN ADMINISTRATIVE 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.	
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Response to Legislative Council Staff Recommendations		11

Agency Person to Be Contacted for Substantive Questions:

For information about this rule, please contact: David Stella, Administrator, Division of Retirement Services, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 267-9038.

Statement Explaining Need for Rule:

If the ETF Board takes no action to revise the existing administrative rule, then when the present emergency rule expires, any subsequent distribution of the funds transferred into the annuity reserve by Act § 27 (1) (a) of 1999 Wis. Act 11 would be prorated, with respect to annuities with effective dates after December 31, 1998, and before January 1, 2000. The pending litigation concerning 1999 Wis. Act 11 may not be resolved before the present emergency rule expires. The purpose of this rule-making is to make permanent the emergency rule-making approved by the DETF, ETF Board, Teachers Retirement and Wisconsin Retirement Boards.

This rule-making will permanently modify the existing administrative rule on prorating in accord with the emergency rule. As a result, all annuities will be increased by the same percentage, including annuities with effective dates after December 31, 1998 and before January 1, 2000, as a result of the transfer of funds mandated by 1999 Wis. Act 11, §27 (1) (a). This treatment of the transfer is, of course, conditional upon the applicable parts of the legislation withstanding review by the courts.

Analysis Prepared by Department of Employee Trust Funds

Authority for rule: Wis. Stat. §§ 227.24, 40.03 (2) (i), and 40.27 (2) (b)

Legislation interpreted: 1999 Wis. Act 11, § 27 (1) (d), a non-statutory provision concerning the distribution of certain funds transferred to the Annuity Reserve.

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). That statutory subsection provides that surpluses in the fixed annuity reserve shall be distributed by

the Employe 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.

Had the ETF Board taken no action, the same prorating would apply to annuities which became effective during 1999 with regard to the distribution of the funds transferred into the annuity reserve by 1999 Wis. Act 11, § 27 (1) (a). The ETF Board promulgated an emergency rule, effective on December 31, 1999, identical to this proposed rule. Both this proposed rule and the emergency administrative rule currently in effect provide that there will be no prorating of the distribution of the funds transferred into the annuity reserve as a result of 1999 Wis. Act 11. The same percentage increase will be applied to annuities in effect for the full year or in effect for only part of 1999.

In December 1999, the Employe Trust Funds Board and Department of Employe Trust Funds commenced litigation concerning the constitutionality of portions of 1999 Wis. Act 11, including the \$4 billion transfer, and the action is now pending before the Supreme Court. See *Employe Trust Funds Board, et al. v. Lightbourn, et al.*, Case No. 99-3297-OA. The Supreme Court issued a preliminary injunction against implementation of Act 11. This rule-making is part of contingency planning by the Department of Employe Trust Funds and ETF Board in case the Act, or parts of it, are approved by the courts and is not prohibited under the terms of the injunction. This rule-making shall not be construed as an endorsement of the transfer of funds from the TAA as mandated by Act 11.

As provided by Wis. Stat. § 227.24 (1) (c), the present emergency rule will expire on May 29, 2000, (150 days after its effective date) unless extended. It is the intention of the Department of Employe Trust Funds and ETF Board that if the \$4 billion transfer from the TAA is ultimately upheld by the courts and implemented, this rule will continue to control the treatment of the surplus in the annuity reserve which results from the extraordinary distribution mandated by Act 11 in the same manner as the emergency rule currently does. If an injunction or other court action delays the TAA transfer until after the extraordinary dividend would be paid, then any amounts which become payable to annuitants as a result of the Act and this rule will be calculated retroactive to the normal annual dividend dates.

Fiscal Estimate:

The rule has no fiscal impact on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues. This rule itself has no anticipated state fiscal effect during the current biennium and no future effect on state funds, which do not include the Public Employee Trust Funds.

The costs of implementing an April 1, 2000, distribution to annuitants of funds transferred into the annuity reserve by the special TAA transfer mandated in this legislation were incorporated into the fiscal effect prepared for 1999 Assembly Bill 495. However, if the payment of the special dividend resulting from the extraordinary transfer from the TAA was to be delayed after April 1, 2000 – for example because of the present injunction or other court action, then previously unanticipated costs in distributing these funds will arise. If the \$4 billion distribution survives review by the courts, then additional payments would be owed to annuitants, some of whom may have died in the interim. DETF anticipates at least some administrative costs in locating, notifying and processing claims by estates or heirs of deceased annuitants, similar to the costs incurred in making the distribution required by the Supreme Court in *WRTA v. Employee Trust Funds Board*, 207 Wis. 2d 1, 558 N.W.2d 83 (1997). The exact amount of these costs will depend, in large part, on how long the litigation over this legislation remains before the courts and the mortality experience among the affected annuitants during that period.

Final Regulatory Flexibility Analysis:

This rule does not affect small businesses.

Text of Proposed Rule:

(BEGINNING OF RULE TEXT)

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 employee 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), Stats., 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 the later of the following dates: (1) the first day of the month commencing after the date of publication as provided by Wis. Stat. § 227.22 (2) (intro.), or (2) the date of a Supreme Court decision or order in *Wisconsin Professional Police Association, Inc., et. al. v. Lightbourn, et. al.*, Case No. 99-3297-OA, which permits implementation of 1999 Wisconsin Act 11, § 27 (1) (a) and (d).

Explanation of Modifications as Result of Testimony at Public Hearing

No modifications were made to the proposed rule as a result of testimony received at the public hearing.

List of Persons Appearing or Registering For or Against the Rule:

A public hearing on both this proposed rule and the identical emergency rule now in effect was held on February 11, 2000, at 1:00 p.m. in Conference Room 2A at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin. The record of the hearing 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.

Mr. Roger Brumm of Middleton, Wisconsin, and Mr. John Schleisman of Madison, Wisconsin, both spoke in favor of the rule. Both described themselves as recent retirees covered by the Wisconsin Retirement System.

Jane Elmer, representing the Wisconsin Retired Educators Association, Melvin B. Sensenbrenner, representing the State Engineering Association, and Steven Urso, representing the Wisconsin Professional Police Association, all registered in favor of the rule.

The Wisconsin Retired Educators Association also wrote a letter, dated February 13, 2000, expressing that organization's support for the rule. A copy of this letter is located on the following page.



WREA
Wisconsin
Retired
Educators
Association

Date: February 13, 2000

To: Michelle Schueller, Department of Employee Trust Funds
(ETF) [Fax: 608-267-4549]

From: Eunice Berg, WREA President
Jane Elmer, WREA Executive Director

RE: Support for Clearinghouse Rule 00-011

We are writing on behalf of the Wisconsin Retired Educators' Association (WREA) to support Clearinghouse Rule 00-011 which corrects an inequity in AB 495. AB 495 is a complex piece of legislation and will be undergoing legal scrutiny.

Clearinghouse Rule 00-001 does correct one of the major problems in the bill. Without it, those who retired during 1999, would be severely wronged because they would not receive their fair share of any extra distribution that might result from the additional \$4 billion recognition from the TAA.

Giving these retirees the straight dividend (rather than the prorated dividend which is customary in the regular dividend process for the first year of retirement) corrects this inequity. Without the correction, 1999 retirees would lose out on a substantial portion of the pension amount due to them, and this loss would be carried forward throughout their retirement, unfairly penalizing them.

Therefore, WREA supports Clearinghouse Rule 00-011 and encourages your support as well.

Affiliated with
the National
Retired Teachers
Association (NRTA)—
A Division of AARP

2564 Branch Street
Middleton, WI 53562
Phone 608-831-5115
Fax 608-831-1694
www.wrea.net



Office of the Clerk
SUPREME COURT
110 E. MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

TELEPHONE (608) 266-1880

FACSIMILE (608) 267-0648

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

To:

December 29, 1999

Judith A. Coleman
Dane County Clerk of Courts
City-County Bldg., Rm. GR-10
210 Martin Luther King, Jr. Blvd.
Madison, WI 53709-0001

Ann U. Smith
Michael Best & Friedrich
P.O. Box 1806
Madison, WI 53701-1806

Anthony L. Sheehan
Lucy T. Brown
Michael J. Van Sistine
Wisconsin Education Assn. Council
P.O. Box 8003
Madison, WI 53708-8003

Thomas M. Pypet
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. Lightbourn, 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 Lightbourn, 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 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.

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

**Testimony on
Clearinghouse Rule 00-011 – Annuitant Dividend Distribution
Clearinghouse Rule 00-021 – Participation in the Variable Fund
And
Clearinghouse Rule 00-022 – Interpretation of Creditable Service under 1999 WI Act 11**

By the Department of Employee Trust Funds

Senate Labor Committee – April 18, 2000

Thank you Chairperson Baumgart and Committee Members for the opportunity to provide information on the three Clearinghouse Rules before you. I am Pam Henning, Director of Legislation and Planning at the Department of Employee Trust and sitting next to me are Linda Owen and Shelly Schueller, Policy Analysts for the Division of Retirement Services, at ETF.

Each of the Clearinghouse Rules clarifies the Department's administrative policy and procedures relating to the implementation of provisions within 1999 Wisconsin Act 11, if upheld by the courts.

Clearinghouse Rule 00-011 – Annuitant Dividend Distribution

Under current law, the fixed dividend granted to an annuitant in the first year after retirement is prorated and based upon the number of full months that the participant was retired during that year.

Under Act 11, \$4 billion from the transaction amortization account (TAA) is transferred to the reserves of the fixed retirement investment fund, including the employee, employer and annuity reserve. The portion of the funds credited from the TAA transfer to the annuity reserve would provide a higher fixed annuitant dividend (approximately 10%).

The rule creates an exception for the portion of the dividend granted in 2000 that is based upon the funds transferred from the TAA. While the normal fixed dividend in 2000 will still be prorated for participants who retired during 1999, the full amount of the special dividend based on the \$4 billion transferred from the TAA will NOT be prorated. This is effective for participants who retired with annuity effective dates after December 31, 1998 and before January 1, 2000.

Clearinghouse Rule 00-021 – Participation in the Variable Fund

Since April 29, 1980, the variable trust fund has been closed to participants under the Wisconsin Retirement System. All participants who elected to join the variable fund prior to that date remain in the program unless they elect to terminate their participation. Once a participant terminates from variable fund participation, there is no ability to re-elect variable participation.

Act 11 does the following:

- Permits all participating active employees under the WRS on or after January 1, 2001 to elect to have 50% of their future contributions deposited in the variable trust fund;
- Applies only to future contributions; participants cannot transfer existing account balances into the variable fund.

The rule does the following:

- Permits former variable fund participants who cancelled variable participation an opportunity to re-enroll;
- Clarifies that an election into the variable fund is effective on the January 1st of the year after the election is received by the Department for existing active employees; and
- Clarifies that for new WRS participants, variable participation is immediate if ETF receives their election form within 30 calendar days after WRS coverage begins.

Clearinghouse Rule 00-022 – Interpretation of Creditable Service under 1999 WI Act 11

Act 11 provides a higher formula factor for service performed before January 1, 2000. Act 11 provides some clarification of what creditable service should be considered to be performed before January 1, 2000, but further clarification is required for our Department to administer these provisions.

The rule clarifies the treatment of all creditable service for purchased service, military service, prior service purchased by a WRS employer, assumed service for WRS disability benefits and for service divided per a qualified domestic relations order (QDRO).

Thank you for your time. We'd be happy to answer any questions you may have on the rules.