CLEARINGHOUSE RULE #12-020

State of Wisconsin

Department of Employee Trust Funds,
Employee Trust Funds Board, and Teachers Retirement Board

FINAL REPORT ON CLEARINGHOUSE RULE #12-020

AN ORDER to repeal ETF 10.10 (13); to renumber and amend ETF 10.10 (15), (16) and (17); to amend ETF 10.10 (1), (2), (10), (11) and (12); to repeal and recreate ETF 10.10 (3), (4), (6), (7), (8) and (9); and create ETF 10.10 (1m) (title), (5) and (16) relating to elections to the Employee Trust Funds and Teachers Retirement Board.

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Economic Impact Report..... SEE EIA

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Agency Person to be Contacted for Questions

Please direct any questions about this rule-making to Steve Hurley, Director of the Office of Policy, Privacy and Compliance, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 267-2847. E-mail address: steve.hurley@etf.state.wi.us.

Statement Explaining Need for Rule

ETF seeks to clarify the Secretary's authority under § 40.03 (2) (p), Stats. to choose alternate means of holding elections of members to the Teachers Retirement Board and Employee Trust Funds Board. When warranted, holding board elections electronically can promote efficiency and minimize costs. Additional changes to the rule are made for the simplification of the elections provisions.

Analysis Prepared by the Department of Employee Trust Funds

1. Statutes Interpreted:

   § 40.03 (2) (p), Stats.

2. Statutory Authority:

   Sections 40.03 (2) (i), and 227.11 (2) (a)(intro), 1. to 3., Stats.

3. Explanation of Agency Authority:

   By statute, the ETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Also, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The scope statement for this rule, submitted to LRB on 03/16/2010 and published in Register No. 651b on 04/01/2010, was sent to LRB prior to June 8, 2011, the effective date of 2011 Wis. Act 21.

4. Related Statute or Rule:

§ 40.03 (2) (p), Stats.

5. Plain Language Analysis:

(a) *Clarify statutory authority of the ETF Secretary to hold board elections in any reasonable manner, including by electronic means.*

When warranted, holding board elections electronically can promote efficiency and minimize costs. It is clear that the Secretary has authority under § 40.03 (2) (p), Stats., to choose the means of holding board elections. However, the provisions in the existing administrative rule contemplate only a paper-based board election process. The changes to the rule provide that the Secretary may choose to hold a board election using a paper-based process, electronically by use of the Internet, by a combination of methods or by any other reasonable means.

(b) *Simplify Wis. Admin. Code* § ETF 10.10

Changes have been made to make provisions in Wis. Admin. Code § ETF 10.10 more understandable and eliminate provisions that create inefficiencies. Some of the clarification in language includes: creation of section headers, re-arranging and renumbering of subsections, and breaking-up sections into subparagraphs.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations:

There are no existing or proposed federal regulations relevant to electronic elections for board members of public pension systems.

7. Comparison with Rules in Adjacent States

- Illinois – The relevant regulations governing board elections to the State Employees' Retirement System of Illinois are found in 80 Ill. Adm. Code 1540.330, Board Elections. The code sets forth procedures for standard paper ballot elections, and does not include provisions for electronic voting.

- Iowa – Iowa law establishes the Iowa Benefits Advisory Committee (BAC) under Iowa Code section 97B.8B. Regulations governing the BAC are provided in IAC 495-3.1. State law gives Iowa Public Employees' Retirement System authority to adopt election rules, however the regulations do not provide for election procedures. There are likewise no regulations governing or authorizing electronic voting methods.

- Michigan – M.C.L.A. 38.3 governs membership for the Retirement Board of the State Employees' Retirement System. Members are appointed in different employment categories by the governor. Similarly, under M.C.L.A. 38.1322, the governor appoints members to the board of the Public School Employees' Retirement System. Because

members are appointed, there are therefore no regulatory provisions governing elections, including electronic voting procedures.

- Minnesota – Regulations governing board elections for the Minnesota State Retirement System are found in Chapter 7900. The regulations cover standard paper ballots and do not include special provisions for electronic voting procedures.

8. Summary of Factual Data and Analytical Methodologies:

ETF worked closely with the Employee Trust Funds Board and Teachers Retirement Board in formulating the needs for electronic voting methods. The rule was put before the boards on two occasions for input and commentary. Analysis hinged on the benefits of paperless elections, including: efficiency and cost, and convenience for voters.

The present rule changes were a result of recommendations from the relevant governing boards and considerations of the efficiency and convenience attributable to electronic voting procedures. ETF conducted analysis with integrity in an accurate, objective, and consistent manner in accordance with its fiduciary responsibilities to its members.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report:

The rule does not have an effect on small businesses because the elections rule governs procedures for electing members to governing boards of a public agency whose members are public employees or annuitants.

10. Effect on Small Business:

There is no effect on small business.

11. Agency Contact Person:

Steve Hurley, Director of the Office of Policy, Privacy and Compliance, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 267-2847. E-mail address: steve.hurley@etf.state.wi.us.

12. Place Where Comments are to be Submitted and Deadline for Submissions:

Comments may be submitted to the contact person no later than 4:30pm, Central Standard Time, on Monday, April 2, 2012. The public hearing will be held at 3:00pm on Monday, March 26, 2012 in conference room GA of the Wisconsin Employee Trust Fund building at 801 W. Badger Rd, Madison, WI 53713.

13. Proposed Effective Date:

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided by s. 227.22 (2) (intro.), Stats.

14. Fiscal Estimate:

The rule will not have any fiscal effect on the administration of the Wisconsin Retirement System, nor will it have any fiscal effect on the private sector, the state or on any county, city, village, town, school district, technical college district, or sewerage districts.

15. Free Copies of Proposed Rule:

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931. The telephone number is: (608) 266-1071.

Text of Proposed Rule

SECTION 1. **ETF 10.10 (1) is amended to read:**

ETF 10.10 Employee trust funds board and teachers retirement board elections. (1) PURPOSE. ~~The purpose of this~~This section ~~is to set forth~~ establishes procedures for all elections of ~~participating employees and annuitants~~persons to the employee trust funds board or the teachers retirement board, pursuant to ss. 15.16 (1) (d) and (f), 15.165 (1) and (3) (a) 1., 2., 6. and 7., and 40.03 (2) (p), Stats. Except where noted otherwise, ~~the~~these procedures ~~established in this section~~ shall apply for elections to either the employee trust funds board or the teachers retirement board.

SECTION 2. **ETF 10.10 (1m) (title) is created to read:**

ETF 10.10 (1m) DEFINITIONS.

SECTION 3. **ETF 10.10 (2) is amended to read:**

(2) SCHEDULING OF ELECTIONS. The secretary shall schedule an election when the term for an elective board position ~~on the employee trust funds board or the teachers retirement board~~ is due to expire or the position is vacated ~~due to resignation, death or~~ for any ~~other~~ reason.
(a) *Regular elections.* When a term is due to expire, the secretary shall schedule the election to ~~assure~~ensure that the election is completed and the new board member announced prior to the date the new term commences.
(b) *Vacancies.* If an elective board position is vacant for any reason other than the term expiring, the secretary shall schedule an election at a time determined by the secretary. The annuitant or participating employee elected in an election to fill a position vacated prior to the end of a term shall serve the remainder of the unexpired term.

SECTION 4. **ETF 10.10 (3) and (4) are repealed and recreated to read:**

(3) CALL FOR NOMINATIONS. The department shall publish, in a manner determined by the secretary, the notice of the election, the nomination timetable and instructions explaining the nomination process for a prospective candidate.

(4) NOMINATION PROCEDURES. A candidate shall be nominated by petition on forms provided by the department. Petitions shall be received by the department no later than the petition filing date in the nomination time schedule published under sub. (3). A nominating petition received after this date is invalid. A candidate shall do all of the following:

(a) *Submit a nominating petition.* Submit to the department a nominating petition containing at least 25 but no more than 50 printed names and valid signatures of participating employees or annuitants eligible to vote in that election. The nominating petition shall contain the name and address of each signer's employer and the date signed. For an annuitant, the name and address of the signer's employer shall be that of the signer's last participating employer in the Wisconsin retirement system. The department will verify the entries on the petition based on records in the department. Entries that cannot be verified shall not be counted. If more

than 50 signatures are submitted, the department shall review for validity only the first 50 signatures, based on the earliest date signed, and disregard the balance.
(b) *Certify the nominating petition.* Sign the nomination petition to certify that all signers are eligible to vote in the election category for which the candidate is running.
(c) *Submit a candidate statement*. Submit a candidate information form to the department containing no more than 150 words. The department shall print no more than the first 150 words of the candidate's information and make it available to eligible voters with the ballots. The candidate must sign the candidate information form verifying the accuracy and truthfulness of the information provided.

Note: A Board Election Packet containing the Nominating Petition form and Candidate Information form can be obtained from the department by contacting the department's board liaison at 877-533-5020.

SECTION 5. **ETF 10.10 (5) is created to read:**

(5) NOMINATIONS FOR THE EMPLOYEE TRUST FUNDS BOARD. Any person who meets the eligibility requirements of s. 15.16 (1) (d) or (f), Stats., on the date the person files nomination papers with the department and who plans to continue meeting the eligibility requirements upon election, may be nominated for election to the employee trust funds board by satisfying the requirements of pars. (4) (a) through (c) within the calendar dates established by the department.

SECTION 6. **ETF 10.10 (6) and (7) are repealed and recreated to read:**

(6) NOMINATIONS FOR THE TEACHERS RETIREMENT BOARD. Any person who meets the eligibility requirements of s. 15.165 (3) (a) 1., 2., 6. or 7., Stats., on the date the person files nomination papers with the department and who plans to continue meeting the eligibility requirements upon election, may be nominated for election to the teachers retirement board by satisfying the requirements of par. (4) (a) through (c) within the calendar dates established by the department.

(7) ELIGIBILITY TO VOTE.
(a) *General requirements.* A person shall be eligible to vote if the person is an annuitant or participating employee in the election category for which the election is being held and meets the other voting eligibility requirements in this section at the time ballot materials are printed for distribution and the department has a record of his or her eligibility.
(b) *Teachers retirement board elections.* A participating employee of the state department of public instruction, state department of health services, state technical college system, and the state educational communications board, who is classified as a teacher under the Wisconsin retirement system, is not employed by a public school or a technical college system district and may not vote in any election to elect a teacher to serve on the teachers retirement board.
(c) *Teacher in public school and a technical college system district.* For a teacher concurrently employed by both a public school and a technical college system district, the teacher shall be eligible to vote in both categories specified under s. 15.165 (3) (a) 1. and 2., Stats.

SECTION 7. **ETF 10.10 (8) is repealed and recreated to read:**

(8) DISTRIBUTION PROCEDURES FOR PAPER BALLOTS. This subsection shall only apply to elections that are conducted using paper ballots. If an election is conducted using a combination of electronic and paper ballots, this subsection shall apply only to the paper ballots used in that election.

(a) *Ballot format.* The department shall print ballots with the candidates' names in alphabetical order and shall include, when the ballots are distributed, instructions for marking the ballot and the deadline for its return.

(b) *Distribution of ballots to participating employees.* At the direction of the secretary, ballots may be distributed either through an employer or directly to a participating employee. If distributed through an employer, the department shall send each employer one ballot individually labeled with the participating employee's name for each participating employee in the election category for which the election is being held who is employed by the employer and whose position is known to the department. A distribution list, prepared by the department and containing the names of participating employees for whom ballots are included, shall accompany the ballots. The department shall require an employer to verify, by signing the distribution list, that the employer distributed the ballots within 30 days of the date they were mailed by the department. The employer shall indicate on the distribution list which ballots could not be distributed and shall return the undistributed ballots.

(c) *Distribution of ballots to annuitants.* The department shall send a ballot directly to each annuitant who is eligible to vote in that election at the last home address the department has on file.

(d) *Distribution of ballots to teachers with multiple employment locations.* If a teacher is employed in more than one employment location within an election category specified under s. 15.165 (3) (a) 1. or 2., Stats., the department shall provide a paper ballot to only one location as determined by the department.

(e) *Distribution of ballots to teachers employed in a public school and a technical college system district.* For a teacher concurrently employed by both a public school and a technical college system district, the department shall provide a ballot to both locations.

SECTION 8. **ETF 10.10 (9) is repealed and recreated to read:**

(9) VOTING. The secretary may conduct the election by paper ballots, electronic ballots, or a combination of such methods.

(a) *Voting procedure.* The secretary shall approve a secure voting procedure that ensures that only a person eligible to vote is permitted to cast a vote, and that only one vote is recorded for each person who casts a vote in an election. A person eligible to vote shall cast his or her vote by indicating his or her choice of candidates in accordance with voting instructions approved by the secretary.

(b) *Voting when there are multiple teachers retirement board positions to be filled.* If there is more than one teachers retirement board position to be filled in an election category and an election is held, voters may vote for as many candidates, in the appropriate election category, as there are positions to be filled.

SECTION 9. **ETF 10.10 (10) is amended to read:**

(10) CERTIFICATION OF ELECTION RESULTS. ~~The teachers retirement~~The board for which an election is being held shall appoint an election committee that shall consist of the secretary of the department or the secretary's designee and 2 ~~teachers retirement~~ board members who are not running for reelection ~~to determine the election results~~. ~~The employee trust funds board shall appoint an election committee which shall consist of the secretary of the department or the secretary's designee and 2 employee trust funds board members who are not running for reelection to determine the election results.~~ A majority of the election committee appointed by the respective boards shall determine the validity of ballots set aside by the department and certify the election results.

SECTION 10. **ETF 10.10 (11) is amended to read:**

(11) VERIFICATION OF ELECTION RESULTS. ~~The department shall review each ballot by checking the signature against the name on the ballot.~~ The department shall set aside ~~ballots~~a vote that it believes may be invalid under pars. (a) to (~~d~~h) for review by the election committee. The election committee shall deem a ~~ballot~~vote invalid if any of the following apply:

(a) The signature is not the same as the name on the ballot.
(b) The ballot is not signed.
(c) Too many candidates have been voted for on the ballot.
(d) A ballot is so defective that the committee cannot determine with reasonable certainty for whom the ballot was cast.
(e) The ballot contains the name of a write−in candidate.
(f) The ballot was submitted by an ineligible voter.
(g) The ballot was not received within the period prescribed by the election notice.
(h) The vote was not cast in the manner prescribed by the secretary under sub. (9) (a).

SECTION 11. **ETF 10.10 (12) is amended to read:**

(12) SPECIAL SITUATIONS. (a) *Insufficient number of candidates for holding an election.* If the number of candidates ~~who file~~whose nomination ~~papers~~ petitions are approved by the department is equal to or less than the number of positions to be filled within an election category, all of the following shall apply:

1. ~~the~~The department shall not schedule an election.
2. The election committee shall not be appointed or convened. ~~and~~
3. ~~the~~The ~~election committee~~ department shall declare all candidates ~~to be~~as elected.

(b) *Multiple positions to be filled in an election category that do not have an equivalent amount of time remaining in a term.* If there are multiple positions to be filled within an election category and the vacant positions have different amounts of time remaining, the following shall apply:
1. If an election has been held, the candidate with the most votes shall receive the position with the most time remaining. The candidate with the second most votes shall receive the position with the second most time remaining, and so forth for any remaining candidates and positions.

2. If an election is not held because the number of candidates is equal to or less than the number of positions to be filled, but there are multiple candidates for the available positions, positions will be selected by the drawing of lots. If there is only one candidate and multiple vacant positions, the candidate will receive the position with most time remaining, unless the candidate requests otherwise from the secretary.

SECTION 12. **ETF 10.10 (13) is repealed.**

SECTION 13. **ETF 10.10 (15) is renumbered 10.10 (13) and amended to read:**

ETF 10.10 (13) TABULATION OF VOTES. ~~Candidates receiving~~The candidate who receives the largest number of votes shall be elected. The election committee shall break a tie by the drawing of lots. The counting of ~~ballots~~votes shall be conducted under the direction of the secretary or the secretary's designee.

SECTION 14. **ETF 10.10 (16) is renumbered 10.10 (14) and amended to read:**

ETF 10.10 (14) NOTIFICATION OF ELECTION RESULTS. For elections scheduled because a term is due to expire, the department shall notify all candidates of the results by certified mail before May 1 following the close of the election. If the department calls an election for any reason other than the expiration of a term, the department shall notify all candidates by certified mail of the results of the election within 15 days of the close of the election.

SECTION 15. **ETF 10.10 (17) is renumbered 10.10 (15) and amended to read:**

ETF 10.10 (15) RETENTION OF BOARD ELECTION MATERIALS. The department shall retain election reports, nominating petitions and ballots for ~~45 days from the date the candidates are notified in sub. (16). If a candidate wishes to request a recount, the candidate shall submit the request to the department within 30 days of the date the candidates are notified of the election results. A recount shall be conducted under the direction of the secretary or his or her designee.~~ at least 1 year after the election is completed.

SECTION 16. **ETF 10.10 (16) is created to read:**

(16) RECOUNT OF RESULTS. A candidate may request no more than one recount per election. To request a recount, the candidate shall submit a written request to the secretary within 10 business days of the date that the candidates were notified of the certified election results under sub. (14). A recount shall be conducted under the direction of the secretary or designee. If the recount results change the ranking of the candidates, the recount results shall be certified by the election committee under sub. (10) and shall stand as the final election results.

SECTION 17 **EFFECTIVE DATE**. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided by s. 227.22 (2) (intro.), Stats.

History: Cr. Register, March, 1984, No. 339, eff. 4−1−84; r. (5) and am. (7) (intro.), Register, January, 1985, No. 349, eff. 2−1−85; am. (10), Register, September, 1992, No. 441, eff. 10−1−92; am. (1) to (7) (a), (7) (c) to (11) (b), (d), (12), (13) and

(15) to (17), cr. (1m) and (11) (e), r. (14), Register, April, 1993, No. 448, eff. 5−1−93; corrections made under s 13.93 (2m) (b) 6., Stats., Register, July, 1997, No. 499; am. (1), (1m) (b) and (7) (intro.), Register, December, 2000, No. 540, eff. 1−1−01; correction in (6) made under s. 13.92 (4) (b) 6., Stats., Register September 2009 No. 645.

(END OF RULE TEXT)

ADMINISTRATIVE RULES
FISCAL ESTIMATE
AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

ETF 10.10 Employee trust funds board and teachers retirement board elections

Subject

Election of members to employee trust funds and teachers retirement board

Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG SEG-S	

Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect ☐ Indeterminate	☐ Increase Existing Revenues ☐ Decrease Existing Revenues	☐ Increase Costs ☐ Could Absorb Within Agency's Budget ☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy ☐ Local Government Units	☐ Specific Businesses/Sectors ☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than $20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

ETF seeks to clarify the Secretary's authority under § 40.03 (2) (p), Stats., to choose alternate means of holding elections of members to the Teachers Retirement Board and Employee Trust Funds Board. When warranted, holding board elections electronically can promote efficiency and minimize costs. Additional changes to the rule are made for the simplification of the elections provisions.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

There is no economic and fiscal impact on small business, business sectors, public utility rate payers, local governmental units and the state's economy as a whole. The rule change addresses the need to clarify statutory authority of the ETF Secretary to hold board elections in any reasonable manner, including electronic means, and to simplify the current code governing board elections procedures. These changes will not have a fiscal effect.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Implementing the rule changes will provide more clarity in the board elections rule, and will afford the Secretary the authority to utilize electronic voting methods in electing members to the board. Electronic voting will provide cost-effective, efficient, faster, and more convenient options for board elections.

Long Range Implications of Implementing the Rule

There are no long range economic or fiscal impacts of the rule.

Compare With Approaches Being Used by Federal Government

Electronic voting methods have become increasingly utilized in all layers of government.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

- Illinois – The relevant regulations governing board elections to the State Employees' Retirement System of Illinois are found in 80 Ill. Adm. Code 1540.330, Board Elections. The code sets forth procedures for standard paper ballot elections, and does not include provisions for electronic voting.

- Iowa – Iowa law establishes the Iowa Benefits Advisory Committee (BAC) under Iowa Code section 97B.8B. Regulations governing the BAC are provided in IAC 495-3.1. State law gives Iowa Public Employees' Retirement System authority to adopt election rules, however the regulations do not provide for election procedures. There are likewise no regulations governing or authorizing electronic voting methods.

- Michigan – M.C.L.A. 38.3 governs membership for the Retirement Board of the State Employees' Retirement System. Members are appointed in different employment categories by the governor. Similarly, under M.C.L.A. 38.1322, the governor appoints members to the board of the Public School Employees' Retirement System. Because members are appointed, there are therefore no regulatory provisions governing elections, including electronic voting procedures.

- Minnesota – Regulations governing board elections for the Minnesota State Retirement System are found in Chapter 7900. The regulations cover standard paper ballots and do not include special provisions for electronic voting procedures.

LCRC FORM 2

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Pam Shannon
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Clearinghouse Assistant Directors

Laura D. Rose
Legislative Council Deputy Director

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 **12-020**

AN ORDER to renumber and amend ETF 10.10 (15) to (17); to amend ETF 10.10 (1), (1m), (2), (8), and (10) to (12); to repeal and recreate ETF 10.10 (3), (6), (7), and (9); and to create ETF 10.10 (5) and (16), relating to elections to Employee Trust Fund Board and Teachers Retirement Board.

Submitted by **DEPARTMENT OF EMPLOYEE TRUST FUNDS**

02-13-2012 RECEIVED BY LEGISLATIVE COUNCIL.

03-09-2012 REPORT SENT TO AGENCY.

SG:DM

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LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

   Comment Attached YES ☐ NO ☑

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

   Comment Attached YES ☑ NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

   Comment Attached YES ☐ NO ☑

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

   Comment Attached YES ☐ NO ☑

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

   Comment Attached YES ☑ NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

   Comment Attached YES ☐ NO ☑

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

   Comment Attached YES ☐ NO ☑

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 12-020

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

2. Form, Style and Placement in Administrative Code

a. The rule summary contains a section with the heading "Accuracy, Integrity, Objectivity and Consistency of Data." This heading is not required by the Manual or s. 227.14 (2), Stats. The department might consider putting the content of the paragraph following that heading under the heading, "Summary of Factual Data and Analytical Methodologies," instead.

b. In the introductory clause of the rule, the order of the enumeration of provisions treated should conform to s. 1.02 (1) (b) of the Manual.

c. The word "section," when referring to the sequentially numbered sections of the rule should be in small caps (SECTION). [s. 1.04, Manual.]

d. It is unusual for an agency to include drafting notes in the rule text. While the notes are useful, it may be more appropriate to place them in the agency's plain language summary of the rule. Notes that are intended to remain in the rule text should not be italicized.

e. The rule should use the procedures for amending rule text specified in s. 1.06 (1) to (3) of the Manual. For example, in s. ETF 10.10 (1), the department changed "the" to "these" by adding the letters "s" and "e" to the end of the word "the." Similar errors are in s. ETF 10.10 (2) and (8) (b). Additionally, the order of strike-throughs and underscores at the beginning of sentences should be reviewed throughout the rule.

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http://www.legis.state.wi.us/lc

f. In s. ETF 10.10 (1m), the department should insert the new definitions by following the procedure in s. 1.03 (5) of the Manual. For example, "ballot" should be inserted as paragraph (am).

g. Throughout the rule, the department uses the plural form of words when the singular form would be more precise. [s. 2.01 (11), LRB *Bill Drafting Manual.*] In s. ETF 10.10 (13), for example, the sentence beginning, "Candidates receiving," would be more precise as follows: "The candidate who receives the largest number of votes shall be elected." Likewise, in s. ETF 10.10 (9), "Persons...shall cast their votes" should be "A person shall cast his or her vote...".

It appears that this problem may have been caused, in part, by the existing rule's confusion of the plural and singular forms. For example, in at least one place, the current rule incorrectly mixes the plural and singular in one sentence: "Annuitants or participating employees shall be eligible to vote if they are an annuitant or participating employee...". [s. ETF 10.10 (3).]

h. In s. ETF 10.10 (8), the department has not followed the procedure for amending rule text. For example, the rule inserts new language without underscoring it and fails to strike existing language that is omitted. The department might consider repealing and recreating this subsection instead because the new rule organizes existing language into several new paragraphs.

i. In s. ETF 10.10 (12) (a), punctuation at the end of sentences should be revised in accordance with s. 1.03 (4) of the Manual.

j. In SECTIONS 11 to 13 of the rule, the department should review s. 1.067 of the Manual, to determine whether the renumbering prescribed by those SECTIONS is appropriate

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. ETF 10.10 (1m), the definition of "ballot" is grammatically unclear. "Paper" and "electronic" appear to be used here as adjectives, but it is not clear what they modify. The only word they could modify in this definition is "methods", but this is grammatically and logically problematic for two reasons. First, a list of adjectives must be immediately followed by the noun modified; "a combination of" is neither a third adjective in the list nor the noun modified by paper and electronic. Second, a ballot is a physical object; a method is not. Defining a physical object as a way of doing something would not make sense.

b. The definition of "signature" in s. ETF 10.10 (1m) is also confusing. "Signature", when used in its conventional sense, is clear enough that a definition would not be required. However, the rule's definition muddies this meaning; it would not necessarily be apparent to someone asked to provide a "handwritten...verification indicating a signatory's claim of authenticity" that he or she was simply being asked to sign his or her name. Because a conventional signature is handwritten, clarification about how an electronic document may be signed is likely necessary, but what constitutes an electronic signature is not clear from the definition in the rule. The department might consider instead defining "electronic signature" or "electronically sign" and amending the rule accordingly.

c. In the first paragraph of s. ETF 10.10 (4), the phrase "any other required forms for a candidate" is awkward and broad. Is it possible to specify the other required forms? Alternatively, would meaning be lost if the words "for a candidate" were deleted? In the same paragraph, "such date" should be changed to "this date". [s. 1.01 (1), Manual.]

d. In s. ETF 10.10 (4) (a), the word "conclusively" is superfluous. In the same paragraph, the department should insert a comma between "signatures based" and between "signed and".

e. The rule incorrectly uses the abbreviation for paragraph in the singular when referring to multiple paragraphs. For example, in s. ETF 10.10 (5), "the requirements of par. (4) (a) through (c)" should be "the requirements of pars. (4) (a) through (c)". [s. 2.04 (1) (d), LRB *Bill Drafting Manual*.]

f. It appears there is an article missing in the first paragraph of s. ETF 10.10 (7) between the words "has" and "record".

g. The use of semicolons in s. ETF 10.10 (7) (b) is unnecessary and confusing. The department should replace the semicolons with commas.

h. In the first paragraph of s. ETF 10.10 (8) are the words "as directed by the secretary" necessary? In the first sentence of par. (b) of that subsection, the word "can" should be changed to "may". [s. 1.01 (2), Manual.]

i. Is the word "including" necessary in s. ETF 10.10 (9)? "Including" means the list that follows is not exhaustive. Are there other means by which the secretary may conduct an election other than by paper ballot, electronic ballot, or a combination of the two? In addition, the phrase "any appropriate means" in that paragraph is extremely broad. Finally, in par. (a) of that subsection, why is the word "secure" underscored?

j. Why does the first sentence of s. ETF 10.10 (10) begin with the conditional, "if"? "When" appears to be more appropriate. In that same paragraph, the use of the word "respective" is confusing. The department might consider deleting "If an election is held" and amending that sentence to begin as follows: "The board for which an election is being held shall appoint an election committee...".

k. In s. ETF 10.10 (11) (h), it appears that "a manner" should be "the manner". Additionally, this paragraph mixes use of the plural form with use of the singular form. The preceding paragraphs all refer to a singular item, e.g., "the ballot is not signed", and "the ballot was not submitted". However, par. (h) refers to "votes" in the plural.

l. There appears to be an article missing in the title to s. ETF 10.10 (12) (b). Additionally, in subd. 1. of that paragraph, the two uses of the word "will" should be replaced by "shall". [s. 1.01 (2), Manual.] Further, the wording of subd. 2. is confusing. The department might consider changing the sentence as follows: "If an election is not held because the number of candidates is equal to or less than the number of positions to be filled, but there are multiple candidates for the available positions, positions will be selected...".

m. In s. ETF 10.10 (13), the department should insert "the secretary's" before the word "designee". That same change should be made in s. ETF 10.10 (16).

n. Although the department has stated the effective date in the rule summary, it must include an effective date clause in the rule itself. [s. 1.02 (4), Manual.]

Response to Legislative Council Staff Recommendations

ETF implemented all Legislative Council staff recommendations.

List of Persons Appearing or Registering For or Against the Rules

No persons appeared at the hearing or registered for or against the rule at the public hearing on March 26, 2012.

Summary of Comments Received at the Public Hearing

No person testified concerning the rule. The record was held open for written comments until April 9, 2012 but ETF did not receive any written comments.

Modifications to Rule as Originally Proposed

No changes were made from the original proposal as a result of public comments.

Modifications to Fiscal Estimate as Originally Proposed

No changes were made to the fiscal estimate in the original proposal.

Modifications to the Analysis Accompanying the Proposed Rule

No changes were made to the analysis accompanying the proposed rule.

Board Authorization for Promulgation

The rule was authorized by the Teachers Retirement Board and Employee Trust Funds Board on June 21, 2012.

Effective Date

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.