

**Proposed Rule Amendment for Spousal/Domestic Partner Consent**

**State of Wisconsin  
Department of Employee Trust Funds  
Employee Trust Fund Board  
Wisconsin Retirement Board  
Teachers Retirement Board  
Group Insurance Board  
Deferred Compensation Board**

The Wisconsin Department of Employee Trust Funds (ETF) proposes an order pursuant to s. 227.14, Stats., to amend administrative rule ETF 20.055 relating to the waiver of spousal/domestic partner consent on Wisconsin Retirement System benefit applications.

**Notice of Public Hearing**

A public hearing on the proposed rule will be held on February 10, 2011 at 2:00 p.m. in Conference Room GA at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin. Persons wishing to attend should come to the reception desk up the stairs (or by elevator) from the main entrance to the building.

**Analysis Prepared by the Department of Employee Trust Funds**

1. Statutes Interpreted:  
S. 40.24 (7) and s. 40.25 (3m), Stats. relating to ETF waiving the requirement for a spouse's/domestic partner's signature on Wisconsin Retirement System benefit applications.
2. Statutory Authority:  
Sections 40.03 (2) (i), (ig), (ir), and 227.11 (2) (a), 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. 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.
4. Related Statute or Rule:  
There are no other rules that clarify the circumstances under which ETF will accept a participant's documentation and certification that a participant is unable to obtain a spouse's/domestic partner's signature on a Wisconsin Retirement System benefit application.

5. Plain Language Analysis:

If a participant has been married for at least one full year at the time a retirement benefit begins, s. 40.24 (7), Stats., requires a spouse's/domestic partner's signature on Wisconsin Retirement System retirement benefit applications unless the participant selects a joint and survivor annuity with the spouse as the named survivor. S. 40.25 (3m) requires a spouse's/domestic partner's signature on Wisconsin Retirement System separation benefit applications, and on lump sum retirement benefit applications when the participant is not restricted to a lump sum retirement benefit.

Both s. 40.24 (7) and s. 40.25 (3m) provide that ETF may waive the requirement for a spouse's/domestic partner's signature in situations where the participant's spouse's or domestic partner's signature cannot be obtained. ETF 20.055 currently restricts ETF to waiving the spousal/domestic partner's signature only in cases where either the spouse/domestic partner has been declared incompetent or the participant does not know the spouse's/domestic partner's whereabouts for at least 90 days. The proposed amendment would increase ETF's flexibility to waive the spousal/domestic partner consent requirement if the participant submits evidence to the department's satisfaction that the spouse's/domestic partner's signature is unobtainable. This flexibility is more consistent with the statutory language and intent than the current rule.

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

There are no existing federal regulations that specifically address how public retirement plans administer a spousal/domestic partner consent requirement.

7. Comparison with Rules in Adjacent States

Employees of public employers in adjacent states do not participate in the Wisconsin Retirement System. The participants in the various public retirement plans in each state are subject to their own plans' spousal and/or domestic partner consent requirements where applicable.

8. Summary of Factual Data and Analytical Methodologies:

The proposed rule amendment is intended to bring ETF's waiver of spousal/domestic partner consent rule into closer harmony with the statutes, and provide ETF with the greater flexibility authorized in the statutes.

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 private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System.

10. Effect on small business:

There is no effect on small business.

11. Agency contact person:  
Linda Owen, Policy Analyst, Department of Employee Trust Funds, 801 W Badger Rd, Madison, WI 53713-7931, P.O. Box 7931 (use ZIP Code 53707 for PO Box); Phone: 608-267-2847; e-mail: [linda.owen@etf.state.wi.us](mailto:linda.owen@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 4:30 p.m., Central Standard Time, on February 21, 2010. The place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.
  
  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 have a minimal fiscal effect, in that it will require minor changes to ETF's procedures with respect to waiving the requirement for spousal/domestic partner consent on Wisconsin Retirement System benefit applications. Any costs are anticipated to be insignificant, and the Department can absorb these costs within the existing base budget. The rule will not create any additional fiscal impact on any county, city, village, town, school district, technical college district, or sewerage districts. The rule will not create any additional fiscal impact on the state for the current biennium. The rule will not have any fiscal impact on the private sector.
  
  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.
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**ETF 20.055 is amended to read:**

**1 ETF 20.055 Spouse's or domestic partner's signature on a benefit application.**

2 Documentation of inability to obtain a spouse's or domestic partner's signature on an  
3 annuity  
4 application as required under s. 40.24 (7) (a) or s. 40.25 (3m), Stats., or on a separation  
5 benefit application as provided in s. 40.25 (3m), Stats., shall be accepted for the  
6 following reasons only:

7 **(1) (a)** The spouse or domestic partner is incompetent as defined under s. 54.10 (3),  
8 Stats., and a copy of the court order appointing the spouse's or domestic partner's  
9 guardian is submitted to the department, ~~except guardianship papers are not required~~  
10 ~~when the benefit payable is a single sum benefit payable under s. 40.25 (1), Stats.~~

11 **(b)** The guardian's signature shall be required on the annuity application in lieu of the  
12 spouse's or domestic partner's signature if the participant chooses an annuity option  
13 other than an option specified under s. 40.24 (7) (a) or s. 40.25 (1) (a), Stats.; ~~or~~.

14 **c)** The spouse's, domestic partner's or guardian's signature is not required when the  
15 participant is only eligible for a single sum benefit payable under s. 40.25 (1) (a), Stats.

16 **(2)** The participant certifies, on a form provided by the department, that the participant  
17 does not now know and has not known the whereabouts of the spouse or domestic  
18 partner for at least the 90 days immediately prior to the date the application is signed, or  
19 the participant provides evidence to the department's satisfaction that the spouse's or  
20 domestic partner's signature is otherwise not obtainable.

21 **Note:** *Section ETF 20.055 (2) requires ~~forms~~ a form which ~~are~~ is available at no cost*  
22 *by contacting the Department of Employee Trust Funds, P.O. Box 7930, Madison, WI*  
23 *53707.*

24 **(3)** The requirements in s. 40.24 (7) (a) (intro) and (b), and s. 40.25 (3m) as it applies  
25 to s. 40.25 (1) (b), Stats., related to the requirement for the domestic partner's signature  
26 on benefit applications, shall not apply if the participant is prohibited under the internal  
27 revenue code from selecting a joint and survivor annuity with the domestic partner as  
28 the named survivor, based on the participant's and domestic partner's respective ages.