



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1023/P5
MIM:emw/skw/wlj

DOA:.....Sherwin, BB0368 - ETF Board restructuring

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

RETIREMENT AND GROUP INSURANCE

EMPLOYEE TRUST FUNDS BOARDS

Board consolidation

Under current law, ETF is under the direction and supervision of the Employee Trust Funds Board (ETFBoard). The ETFBoard has 11 appointed or elected members, serving four-year terms, and two members appointed by virtue of another office each holds (ex officio members). Eight of the board members are appointed by two boards attached to ETF, four members from the Wisconsin Retirement Board (WRB) and four members from the Teachers Retirement Board (TRB).

The ETFBoard sets policy for ETF; appoints the secretary of employee trust funds; approves tables used for computing benefits, contribution rates, and actuarial assumptions; authorizes all annuities except for disability; approves or rejects ETF administrative rules; and oversees the benefit programs for state and local government employees, except the group insurance and deferred compensation programs.

Under current law, the WRB advises the ETFBoard on matters relating to retirement; approves or rejects administrative rules; authorizes or terminates disability benefits for Wisconsin Retirement System members who aren't teachers; and hears appeals of disability rulings. It appoints one member to the separate State

of Wisconsin Investment Board (SWIB). All members of the WRB are ex officio members or appointed by the governor.

Also under current law, the TRB advises the ETFB on retirement and other benefit matters involving involving teachers at public schools, technical schools, community colleges, and state universities; acts on administrative rules; authorizes or terminates teacher disability benefits; and hears disability benefit appeals. Nine members of the TRB are elected, and four are appointed by the governor.

This bill eliminates the WRB and the TRB and transfers their property, contracts, orders, and pending matters to the ETFB on the effective date of the bill. The bill also transfers the duties of the WRB and the TRB to the ETFB. Between the effective date of the bill and April 30, 2026, all current members of the ETFB will transition off the ETFB at a rate of two to three members per year, and they will be replaced by new members. The membership of the ETFB will remain 13, with a mix of ex officio, elected, and appointed members.

State of Wisconsin Investment Board and membership

Under the bill, the secretary of employee trust funds or his or her designee and one Wisconsin Retirement System (WRS) participant appointed by the ETFB are members of SWIB. Under current law, two WRS participants are members of SWIB, one of which is a teacher participant appointed by the TRB and the other is a participant appointed by the WRB who is not a teacher.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 15.07 (1) (a) 3. of the statutes is amended to read:

15.07 (1) (a) 3. Members of the employee trust funds board appointed or elected under s. 15.16 (1) (a), (b), (d) and (f) (cm) 1. a. to e., 2. a. to d., and 3. shall be appointed or elected as provided in that section.

SECTION 2. 15.07 (5) (f) of the statutes is amended to read:

15.07 (5) (f) ~~Members of the teachers retirement board, appointive members of the Wisconsin retirement board, appointive~~ Appointive members of the group insurance board, members of the deferred compensation board, and members of the employee trust funds board, \$25 per day.

SECTION 3. 15.16 (1) of the statutes is repealed and recreated to read:

15.16 (1) EMPLOYEE TRUST FUNDS BOARD. (am) *Definitions*. In this subsection:

1. “Annuitant” has the meaning given for purposes other than group life insurance under s. 40.02 (4).
2. “Educational support personnel employee” has the meaning given in s. 40.02 (22m).
3. “Elected official” has the meaning given in s. 40.02 (24).
4. “Governing body” has the meaning given in s. 40.02 (36).
5. “Municipal employer” has the meaning given in s. 40.02 (41n).
6. “Participating employee” has the meaning given in s. 40.02 (46).
7. “Participating employer” has the meaning given in s. 40.02 (47).
8. “Protective occupation participant” has the meaning given in s. 40.02 (48).
9. “Teacher” has the meaning given in s. 40.02 (55).

(bm) *Board member status*. Any member of the employee trust funds board who loses the status upon which the appointment or election was based shall cease to be a member of the board upon appointment or election to the board of a qualified successor.

(cm) *Membership*. The employee trust funds board shall consist of the governor or the governor’s designee on the group insurance board, the administrator of the division of personnel management in the department of administration or the administrator’s designee, and 11 individuals appointed or elected for 4-year terms as follows:

1. To represent the interests of annuitants and participating employees, the following individuals:

- a. One member who is a participating employee and who is a public school teacher, elected by participating employees meeting the same criteria. The member

elected under this subd. 1. a. may not be from the same county as the member appointed under subd. 2. e.

b. One member who is an annuitant and who retired from covered service, elected by annuitants meeting the same criteria.

c. One member who is an annuitant and who retired from covered service as a public school teacher, elected by annuitants.

d. One member who is a protective occupation participant or who retired from a protective occupation, elected by protective occupation participants meeting the same criteria.

e. One member who is a participating employee and who is an educational support personnel employee, elected by participating employees meeting the same criteria.

2. To represent the interests of participating employers, elected officials, municipal employers, and administrators, the following individuals, appointed by the governor:

a. One member who is a participating employee and who is an employee of the University of Wisconsin System or a state employee.

b. One member who is a participating employee and who is an administrator of a public school in this state.

c. One member who is a participating employee and who is an elected member of the governing body of a municipal employer that is a participating employer.

d. One member who is a participating employee as an administrator of a municipal employer that is a participating employer and who is not employed by a public school district.

e. One member who is a participating employee and who is a public school teacher. The member appointed under this subd. 2. e. may not be from the same county as the member appointed under subd. 1. a.

3. One member who is elected by participating employees and is a public member and who is not a participant in or beneficiary of the Wisconsin Retirement System, with experience in actuarial analysis, audit functions, or finance related to an employee benefit plan or experience with significant administrative responsibility for a major insurer. It is the intent of the legislature that the member elected under this subdivision shall represent the interests of the taxpayers of this state and shall not be representative of public employee or employer interests.

SECTION 4. 15.165 (1) (b) of the statutes is amended to read:

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

SECTION 5. 15.165 (3) of the statutes is repealed.

SECTION 6. 15.76 (1m) of the statutes is created to read:

15.76 (1m) The secretary of employee trust funds, or the secretary's designee.

SECTION 7. 15.76 (3) of the statutes is amended to read:

15.76 (3) ~~Two participants~~ One participant in the Wisconsin retirement system appointed for a 6-year terms, ~~one of whom shall be a teacher participant appointed by the teacher retirement board and one of whom shall be a participant other than a teacher appointed term by the Wisconsin retirement board~~ employee trust funds board.

SECTION 8. 40.01 (3) of the statutes is amended to read:

40.01 (3) COMPATIBILITY OF TRUSTEE RESPONSIBILITIES. Membership on the employee trust funds board, group insurance board, and deferred compensation board, ~~Wisconsin retirement board and the teachers retirement board~~ shall not be incompatible with any other public office. The board members and the employees of the department shall not be deemed to have a conflict of interest in carrying out their responsibilities and duties in administering this chapter, or taking other appropriate actions necessary to achieve the purposes of this chapter, solely by reason of their being eligible for benefits under the benefit plans provided under this chapter. However, any board member or employee of the department is expressly prohibited from participating in decisions directly related to a specific benefit, credit, claim, or application of the person and from participating in negotiations or decisions on the selection of actuarial, medical, legal, insurance, or other independent contractors if the board member or employee of the department has a direct or indirect financial interest in or is an officer or employee or is otherwise associated with the independent contractor.

SECTION 9. 40.03 (1) (j) of the statutes is amended to read:

40.03 (1) (j) Shall accept timely appeals from determinations made by the department, ~~other than appeals of determinations made by the department regarding disability annuities.~~ The board shall review the relevant facts and may hold a hearing. Upon completion of its review and hearing, if any, the board shall make a determination which it shall certify to the participating employer or the appropriate state agency and to the appropriate employee, if any. The board's determination of an employee's status under s. 40.06 (1) (e) shall remain in effect until receipt by the department of notification indicating a different classification. A participant may appeal that determination as provided by s. 40.06 (1) (e).

SECTION 10. 40.03 (2) (d) of the statutes is amended to read:

40.03 (2) (d) May suspend an annuity pending final action by the board, or a disability annuity pending final action by the ~~Wisconsin retirement board or the teachers retirement board~~, when, in the secretary's judgment, the annuitant is not eligible to receive the annuity.

SECTION 11. 40.03 (2) (p) of the statutes is amended to read:

40.03 (2) (p) Shall establish procedures for and conduct the elections of board members required under ss. s. 15.16 (1) (d) and 15.165 (3) (a) 1., 2., 6. and 7. (1) (cm)
1. The procedures shall include the establishment of a nominating process and shall provide for the distribution of ballots to all participating employees and annuitants eligible to vote in the election.

SECTION 12. 40.03 (2) (v) of the statutes is amended to read:

40.03 (2) (v) May settle any dispute in an appeal of a determination made by the department that is subject to review under sub. (1) (j), or (6) (i), (7) (f), or (8) (f), or s. 40.80 (2g), but only with the approval of the board having the authority to accept the appeal. In deciding whether to settle such a dispute, the secretary shall consider the cost of litigation, the likelihood of success on the merits, the cost of delay in resolving the dispute, the actuarial impact on the trust fund, and any other relevant factor the secretary considers appropriate. Any moneys paid by the department to settle a dispute under this paragraph shall be paid from the appropriation account under s. 20.515 (1) (r).

SECTION 13. 40.03 (7) of the statutes is repealed.

SECTION 14. 40.03 (8) of the statutes is repealed.

SECTION 15. 40.08 (12) of the statutes is amended to read:

40.08 (12) COURT REVIEW. Notwithstanding s. 227.52, any action, decision, or determination of the board, ~~the Wisconsin retirement board, the teachers retirement board,~~ the group insurance board, or the deferred compensation board in an administrative proceeding shall be reviewable only by an action for certiorari in the circuit court for Dane County that is commenced by any party to the administrative proceeding, including the department, within 30 days after the date on which notice of the action, decision, or determination is mailed to that party, and any party to the certiorari proceedings may appeal the decision of that court.

SECTION 16. 40.27 (2) (d) of the statutes is repealed.

SECTION 17. 40.63 (5) of the statutes is amended to read:

40.63 (5) The department shall make a report based on the evidence prescribed in subs. (1) to (4) as to whether a disability benefit shall be granted and the department shall submit the report to the ~~teachers retirement board for teacher participants and to the Wisconsin retirement board for participants other than teachers.~~ A copy of the report and notice of the date that the report was presented, or will be presented, to the ~~appropriate board and the board's name,~~ shall be mailed to the applicant and to the applicant's former employer. Either the applicant or the employer may request a hearing under s. 227.44 to contest the department's determination by filing a timely appeal with the ~~appropriate board.~~ If a request for a hearing is not timely filed, and the ~~appropriate board~~ does not disapprove the department's determination or request additional information within the time allowed for filing appeals, the report shall be final. If the board requests additional information, the report shall be final 30 days after the board's receipt of the requested information unless the board disapproves the report. If the report is disapproved, notice of the board's action shall be sent to the applicant and the applicant's former

employer. Either the applicant or the employer may contest the board's action by submitting a written request for a hearing under s. 227.44 to the appropriate board within 30 days following the date on which the notice of the board's action was mailed to the applicant or the employer.

SECTION 18. 40.63 (9) (d) of the statutes is amended to read:

40.63 (9) (d) If the department terminates a disability annuity under this subsection, the department shall make a report which shall include the department's determination and the reasons for the determination. The department shall submit the report to the ~~teachers retirement board for teacher participants and to the Wisconsin retirement board for participants other than teachers.~~ A copy of the report and notice of the date that the report was presented, or will be presented, to the appropriate board, and the board's name, shall be mailed to the affected annuitant. An annuitant may request a hearing under s. 227.44 to contest the department's determination by filing a timely appeal with the appropriate board. If a request for a hearing is not timely filed, and the appropriate board does not disapprove the department's determination or request additional information within the time allowed for filing appeals, the report shall be final. If the board requests additional information, the report shall be final 30 days after the board's receipt of the requested information unless the board disapproves the department's determination.

SECTION 19. 40.65 (3) of the statutes is amended to read:

40.65 (3) The ~~Wisconsin retirement board~~ shall determine the amount of each monthly benefit payable under this section and its effective date. The board shall periodically review the dollar amount of each monthly benefit and adjust it to conform with the provisions of this section. The board may request any income or benefit information, or any information concerning a person's marital status, which

it considers to be necessary to implement this subsection and may require a participant to authorize the board to obtain a copy of his or her most recent state or federal income tax return. The board may terminate the monthly benefit of any person who refuses to submit information requested by the board, who refuses to authorize the board to obtain a copy of his or her most recent state or federal income tax return, or who submits false information to the board.

SECTION 20. 40.65 (5) (b) (intro.) of the statutes is amended to read:

40.65 (5) (b) (intro.) The ~~Wisconsin retirement~~ board shall reduce the amount of a participant's monthly benefit under this section by the amounts under subds. 1. to 6., except that the board may determine not to reduce a participant's benefit because of income related to therapy or rehabilitation. The ~~Wisconsin retirement~~ board may assume that any benefit or amount listed under subds. 1. to 6. is payable to a participant until it is determined to the board's satisfaction that the participant is ineligible to receive the benefit or amount, except that the department shall withhold an amount equal to 5 percent of the monthly benefit under this section until the amount payable under subd. 3. is determined.

SECTION 21. 40.65 (6) (intro.) of the statutes is amended to read:

40.65 (6) (intro.) The ~~Wisconsin retirement~~ board shall adjust the monthly salary of every participant receiving a benefit under this section using the salary index for the previous calendar year as follows:

SECTION 22. 601.415 (3) of the statutes is repealed.

SECTION 9113. Nonstatutory provisions; Employee Trust Funds.

(1) TERMINATION OF WISCONSIN RETIREMENT BOARD AND TEACHERS RETIREMENT BOARD.

(a) *Transfer of orders, pending matters, contracts, and property.*

1. 'Orders.' All orders issued by the Wisconsin retirement board and the teachers retirement board that are in effect on the effective date of this subdivision remain in effect until their specified expiration date or until modified or rescinded by the employee trust funds board.

2. 'Pending matters.' Any matter pending with the Wisconsin retirement board or the teachers retirement board on the effective date of this subdivision is transferred to the employee trust funds board and, with respect to the pending matter, are considered as having been submitted to or taken by the employee trust funds board.

3. 'Contracts.' All contracts entered into by the Wisconsin retirement board or the teachers retirement board in effect on the effective date of this subdivision remain in effect and are transferred to the employee trust funds board. The employee trust funds board shall carry out any obligations under such a contract until the contract is modified or rescinded by the employee trust funds board to the extent allowed under the contract.

4. 'Tangible personal property.' On the effective date of this subdivision, all tangible personal property, including records, of the Wisconsin retirement board and the teachers retirement board is transferred to the employee trust funds board.

(b) *Interim employee trust funds board membership terms.*

1. Notwithstanding s. 15.16 (1) (cm) 1., the employee trust funds board member appointed under s. 15.165 (3) (a) 4., 2019 stats., who is a member on the effective date of this subdivision shall continue to serve on the employee trust funds board until April 30, 2022.

2. Notwithstanding s. 15.16 (1) (cm) 2., the employee trust funds board member appointed under s. 15.165 (3) (b) 7. or 8., 2019 stats., who is a member on the effective

date of this subdivision shall continue to serve on the employee trust funds board until April 30, 2022.

3. Notwithstanding s. 15.16 (1) (cm) 1., the employee trust funds board member appointed under s. 15.165 (3) (b) 1., 2., 4., 5., or 8., 2019 stats., who is a member on the effective date of this subdivision shall continue to serve on the employee trust funds board until April 30, 2022.

4. Notwithstanding s. 15.16 (1) (cm) 1., the employee trust funds board member elected under s. 15.165 (3) (a) 7., 2019 stats., who is a member on the effective date of this subdivision shall continue to serve on the employee trust funds board until April 30, 2023.

5. Notwithstanding s. 15.16 (1) (cm) 1., the employee trust funds board member appointed under s. 15.165 (3) (a) 3. or 5., 2019 stats., who is a member on the effective date of this subdivision shall continue to serve on the employee trust funds board until April 30, 2023.

6. Notwithstanding s. 15.16 (1) (cm) 2., the employee trust funds board member appointed under s. 15.16 (1) (b), 2019 stats., but not under s. 15.16 (1) (b) 1. to 3., 2019 stats., who is a member on the effective date of this subdivision shall continue to serve on the employee trust funds board until April 30, 2024.

7. Notwithstanding the term limits set forth in s. 15.16 (1) (intro.), 2019 stats., and s. 15.16 (1) (cm) (intro.), and notwithstanding s. 15.16 (1) (cm) 3., the employee trust funds board member appointed under s. 15.16 (1) (c), 2019 stats., shall continue to serve on the employee trust funds board until April 30, 2024.

8. Notwithstanding s. 15.16 (1) (cm) 2., the employee trust funds board member appointed or elected under s. 15.165 (3) (a) 1. or 2., 2019 stats., who is a member on

the effective date of this subdivision shall continue to serve on the employee trust funds board until April 30, 2025.

9. Notwithstanding s. 15.16 (1) (cm) 2., the employee trust funds board member appointed under s. 15.165 (3) (b) 3., 6., or 7., 2019 stats., who is a member on the effective date of this subdivision shall continue to serve on the employee trust funds board until April 30, 2025.

10. Notwithstanding the term limits set forth in s. 15.16 (1) (intro.), 2019 stats., and s. 15.16 (1) (cm) (intro.), the members elected under s. 15.16 (1) (d) and (f), 2019 stats., who are members on the effective date of this subdivision shall continue to serve on the employee trust funds board until April 30, 2026.

(END)