



**STATE OF WISCONSIN**  
**Department of Employee Trust Funds**  
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SECRETARY

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State of Wisconsin  
Department of Employee Trust Funds  
Employee Trust Fund Board  
Wisconsin Retirement Board  
Teachers Retirement Board

## **NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN That The Wisconsin Department of Employee Trust Funds (ETF) proposes an order pursuant to s. 227.14, Stats., to repeal ETF 10.10 (13); to repeal and recreate ETF 10.10 (3), (4), (6), (7) and (9); to amend ETF 10.10 (1), (1m), (2), (8), (10), (11) and (12); to renumber and amend ETF 10.10 (15), (16) and (17); and create ETF 10.10 (5) and (16) relating to elections to the Employee Trust Funds and Teachers Retirement Board.

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### **Public Hearing Information**

A public hearing on the proposed rule will be held on March 26, 2012 at 3:00p.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 located up the stairs and directly to the left (or by elevator) from the main entrance to the building.

### **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.

### **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, additional definitions, 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.

9. Accuracy, Integrity, Objectivity and Consistency of Data:

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.

10. 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.

11. Effect on Small Business:

There is no effect on small business.

12. 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](mailto:steve.hurley@etf.state.wi.us).

13. 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.

14. 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.

15. 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.

16. 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), (1m) and (2) are amended to read:**

**ETF 10.10 Employee trust funds board and teachers retirement board elections.** ~~(1) The purpose of this~~ **PURPOSE.** ~~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, ~~these~~ **se** procedures established in this section shall apply for elections to either the employee trust funds board or the teachers retirement board.

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**(1m) DEFINITIONS.** In this section:

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(a) "Annuitant" has the meaning given in s. 40.02 (4), Stats.

(b) "Ballot" means paper, electronic, or a combination of methods to record votes.

~~(b)~~(c) "Election category" means the class of participating employees or annuitants who are eligible under s. 15.16 (1) (d) or (f), or 15.165 (3) (a) 1., 2., 6. or 7., Stats., to vote to elect a member to the employee trust funds board or the teachers retirement board.

~~(c)~~(d) "Participating employee" has the meaning given in s. 40.02 (46), Stats.

(e) "Signature" means handwritten or electronic verification indicating a signatory's claim of authenticity.

~~(d)~~(f) "Teacher" has the meaning given in s. 40.02 (55), Stats.

**(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.~~

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(a) Regular elections. When a term is due to expire, the secretary shall schedule the election to ~~as~~ **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 2. **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 prospective candidates.

*Drafting Note (not for inclusion in final rule): Language in the old 10.10 (3) relates to eligibility to vote, and has been moved, with some amendments, to the new 10.10 (7) ELIGIBILITY TO VOTE.*

**(4) NOMINATION PROCEDURES.** Candidates shall be nominated by petition on forms provided by the department. Petitions and any other required forms for a candidate 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 such 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 annuitants, 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 conclusively 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.*

*Drafting Note (not for inclusion in final rule): Language in the old 10.10 (4) relates to distribution of voting materials for teachers board elections and eligibility for voting in teachers board elections. The language has been moved, with some amendments, to the new 10.10 (7) ELIGIBILITY TO VOTE, and 10.10 (8) DISTRIBUTION PROCEDURES FOR PAPER BALLOTS.*

Section 3. **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 par. (4) (a) through (c) within the calendar dates established by the department.

Section 4. **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.

*Drafting Note (not for inclusion in final rule): Language in the old 10.10 (6) relates to eligibility to vote, and has been moved, with some amendments, to the new 10.10 (7) ELIGIBILITY TO VOTE.*

**(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 record of their eligibility.

(b) *Teachers retirement board elections.* Participating employees of the state department of public instruction; state department of health services; state technical college system; and the state educational communications board, who are classified as teachers under the Wisconsin retirement system, are 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.

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*Drafting Note (not for inclusion in final rule): Language in the old 10.10 (7) relating to nomination to the Teachers Retirement Board has been moved, with some amendments, to the new 10.10 (5) NOMINATION TO THE TEACHERS RETIREMENT BOARD. Language in the old 10.10 (7) relating to nominations to the Employee Trust Funds Board is in the new 10.10 (6). Provisions relating to nomination procedures in the old 10.10 (7) are in the new 10.10 (4) NOMINATION PROCEDURES.*

Section 5. **ETF 10.10 (8) is amended to read:**

**(8) DISTRIBUTION PROCEDURES FOR PAPER BALLOTS.** This subsection shall only apply to elections that are conducted using paper ballots as directed by the secretary. 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 can be distributed either through employers or directly to participating employees. If distributed through employers, ~~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 employers 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 6. **ETF 10.10 (9) is repealed and recreated to read:**

(9) VOTING. The secretary may conduct the election by any appropriate means, including 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 persons eligible to vote are permitted to cast a vote, and that only one vote is recorded for each person who casts a vote in an election. Persons eligible to vote shall cast their votes by indicating their 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.

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Section 7. **ETF 10.10 (10) is amended to read:**

(10) CERTIFICATION OF ELECTION RESULTS. ~~If an election is held, the respective~~  
~~The teachers retirement board 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 8. **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/votes that it believes may be invalid under pars. (a) to (e) 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) Votes were not cast in a manner prescribed by the secretary under sub. (9) (a).

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Section 9. **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 department shall not schedule an election;
- 2. the election committee shall not be appointed or convened; and
- 3. the ~~election committee~~ department shall declare all candidates ~~to be~~ elected.

(b) Multiple positions to be filled in an election category that do not have an equivalent amount of time remaining in 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 will receive the position with the most time remaining. The candidate with the second most votes will 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 in accordance with par. (a), and there is more than one candidate, 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.

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Section 10. **ETF 10.10 (13) is repealed.**

*Drafting Note (not for inclusion in final rule): Language in the old 10.10 (13) is retained in the new 10.10 (9) (b). The provision states that where there is more than one teacher retirement board position to be filled in a 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. For example, on the teachers retirement board the public school teacher category has within it six positions that are elected. If there are two open public school teacher positions, voters can vote for two candidates in an election for that position. There is no equivalent language for the employee trust funds board because that board's elected categories only permit one person to fill a position, i.e., one annuitant representative and one educational support personnel representative.*

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Section 11. **ETF 10.10 (15) is renumbered 10.10 (13) and amended to read:**

(13) TABULATION OF VOTES. Candidates receiving 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 designee.

Section 12. **ETF 10.10 (16) is renumbered 10.10 (14) and amended to read:**

(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.

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Section 13. **ETF 10.10 (17) is renumbered 10.10 (15) and amended to read:**

(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) at least 1 year after the election is completed. ~~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.~~

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*Drafting Note (not for inclusion in final rule): Language in the old 10.10 (17) relating to retention of nominating petitions and ballots for 45 days from the date candidates are notified, has been amended to one year to be in accord with the Department's long-existing Records Retention/Disposition Authorization for election materials, which indicates that election materials are kept for one year. Language in old 10.10 (17) relating to recounts is retained, with some amendments, in the new 10.10 (16).*

Section 14. **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.

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(END OF RULE TEXT)