

**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYEE TRUST FUNDS
EMPLOYEE TRUST FUND BOARD
WISCONSIN RETIREMENT BOARD
TEACHERS RETIREMENT BOARD
GROUP INSURANCE BOARD
DEFERRED COMPENSATION BOARD**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #09-048

FINAL RULE to amend ETF 11.15 (4), relating to the agent for service of process upon the boards that are attached to the department.

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Agency Person to be Contacted for Questions

Please direct any questions about the proposed rule to David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 264-6936. E-mail address: david.nispel@etf.state.wi.us.

Statement Explaining Need for Rule

This rule-making is needed to improve the procedure for receipt of service of process upon the boards attached to the department by increasing the number of persons who are authorized to accept such service.

Analysis Prepared by the Department of Employee Trust Funds

1. Statute interpreted:

Section 40.03, Stats.

2. Statutory authority:

Sections 40.03 (2) (i), (ig), (ir) and 227.11 (2) (a), Stats.

3. Explanation of agency authority:

By statute, the DETF 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.

4. Related statute or rule:

Ch. ETF 11, Wis. Admin. Code, establishes a procedure for the review of appealable department determinations by the board responsible for the subject matter. There are no other related administrative rules or statutes.

5. Plain language analysis:

The purpose of this rule is to improve the procedure for receipt of service of process upon the boards attached to the department by increasing the number of persons who are authorized to accept such service. The rule eliminates the reference to a chief counsel and changes that position to general counsel, and adds 2 other positions to the list of persons designated to accept service for the board.

6. Summary of, and comparison with, existing or proposed federal regulations:

There are no existing or proposed federal regulations that directly pertain to this proposed rule.

7. Comparison with rules in adjacent states:

The department did not locate any comparable rule or statute in any adjacent states.

8. Summary of factual data and analytical methodologies:

Currently, only three positions are designated by rule to receive service on behalf of the board: the chief counsel of the department and the division administrator or program director administering the program which pertains to the underlying appeal to the board. This rule will improve the procedure for receipt of service of process upon the boards attached to the department by increasing the number of persons who are authorized to accept such service.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

This 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. Anticipated costs incurred by private sector

None.

11. Statement of effect on small business:

The rule has no effect on small businesses.

Regulatory Flexibility Analysis:

The proposed rule has no significant effect on small businesses because only governmental employers and their employees may participate in the benefit programs under ch. 40 of the statutes administered by the Department of Employee Trust Funds.

Fiscal Estimate:

The proposed rule has no direct fiscal impact. The proposed rule generates no revenues for any employer. The proposed rule itself has no effect on the fiscal liabilities of any county, city, village, town, school district, technical college district or sewerage. The rule has no state fiscal effect during the current biennium and no fiscal impact on state funds.

Text of Rule

ETF 11.15 (4) is amended to read:

ETF 11.15 (4). AGENT FOR SERVICE UPON BOARD. Except as provided in this subsection, no person or employee of the department is authorized to accept service for the board. From time to time the board may by motion designate a person, either by name or position, as agent to accept personal service for the board. Persons holding the following positions, whose names shall be disclosed by the department upon request, are designated as agents to accept personal service on behalf of the board:

- (a) The ~~chief counsel~~ general counsel of the department.
- (b) The division administrator or program director administering the particular program which is the subject matter of the underlying appeal to the board.
- (c) The deputy secretary of the department.
- ~~(d)~~ The secretary of the department or his or her designees.

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(end of rule text)

Response to Legislative Council Staff Recommendations

The DETF implemented all of the Legislative Council Staff recommendations contained in the Clearinghouse Report. This involved making changes in clarity, grammar, punctuation, and use of plain language.

List of Persons Appearing or Registering For or Against the Rules.

No persons registered either for or against the rule at the public hearing on August 13, 2009.

Summary of Comments Received at Public Hearing.

No person wished to testify concerning the rule. The record was held open for written comments until 4:30 p.m. on August 13, 2009, but no comments were received.

Modifications to Rule as Originally Proposed as a Result of Public Comments

None.

Modifications to the Analysis Accompanying the Proposed Rule.

None.

Modifications to the Initial Fiscal Estimate

None.

Board Authorization for Promulgation

This final draft report on Clearinghouse Rule #09-048 has been duly approved for submission to the Legislature, and for promulgation, by the Department of Employee Trust Funds, and by the Employee Trust Funds Board, Wisconsin Retirement Board and Teachers Retirement Board at their meetings on September 17, 2009, and by the Group Insurance Board at its meeting on November 10, 2009.

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.

Respectfully submitted,

DEPARTMENT OF EMPLOYEE TRUST FUNDS

David A. Stella
Secretary

Date: _____