



STATE OF WISCONSIN
Department of Employee Trust Funds

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Outline of Remarks to Special Committee on Charter Schools
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By: John Vincent, Administrator, Division of Trust Finance and Employer Services
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1. With respect to charter schools in Wisconsin, both federal and state law require that an employer participating in a qualified governmental plan be an instrumentality of a state or local government.
2. Federal law provides guidance on what constitutes an instrumentality. The WRS looks to this definition when making a determination of eligibility. In short, an instrumentality must meet a three-part test.
 - a) The entity or entities that created the new entity must have the power to do so under Wisconsin Statutes. The new entity must provide documentation to the Department of Employee Trust Funds which shows that it was created in accordance with applicable provisions of the Wisconsin Statutes.
 - b) The entity must be an independent legal entity. The following powers are characteristic of an independent legal entity:
 - To levy taxes.
 - To borrow money and to issue bonds.
 - To hold and to convey real and personal property.
 - To sue and to be sued in its own name.
 - To enter into contracts.
 - To hire, to supervise, and to discharge its own employees.
 - c) The entity must perform a governmental function. Examples of governmental functions are police and fire protection, education, sanitation and flood control.

Note: Schools, hospitals and libraries, as well as associations formed for public purposes, such as soil and water conservation, may be instrumentalities, depending on the facts and circumstances. State sponsorship of an organization, state regulation of its activities, the participation of its employees in a public retirement system, and operation with public funds are among the factors to be considered in determining whether an organization is an instrumentality. If an organization is essentially under private ownership and control, it is not an instrumentality. (Source: IRS and SSA)

3. Charter schools that are set up to be “non-instrumentalities” do not currently qualify for participation in the WRS
4. If the WRS loses its status as a qualified plan:
Loss of “local” control and becomes subject to ERISA (Employee Retirement Income Security Act) provisions, which is controlled by Federal legislation.
5. Other things that should be considered:
 - Will they be required to cover all of their employees at the charter school?
§40.22(1), Wis. Stats., requires all eligible employees to be covered in WRS:
“...each employe currently in the service of, and receiving earnings from, a...participating employer shall be included within the provisions of the Wisconsin retirement system...”
 - Will they be allowed to withdraw from the WRS?
§40.21(1) *“Any employer shall be included within and thereafter subject to the provisions of the Wisconsin retirement system by so electing, through adoption of a resolution by the governing body of the employer.”*
 - Will they be treated as a state employer or a local employer? This will effect other benefits they may be eligible for.
 - What mechanism will guarantee payment of obligations to the Trust?
 - Will they be required to obtain an IRS revenue ruling to join the WRS?
6. Contribution rates for general employees, including teachers:
10.6% of payroll for teachers and general employees (includes 5.0% participant rate that is generally assumed by the employer)