

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 4/18/00

BILL NO. _____

OR

SUBJECT _____

CR 00-011, 00-021, 00-022

David Austin

(NAME)

(Street Address or Route Number)

(City and Zip Code)

Sen. Robson
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 4-18-00

BILL NO. _____

OR

SUBJECT CR # 011, 021, 022

Pam Henning, Shelly Schueller
& Linda Curen

(NAME)

(Street Address or Route Number)

Madison

(City and Zip Code)

Dept. of Employee Trust Funds
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

Vote Record

Senate - Committee on Labor

Date: 4-18-00

Moved by: Sen Breske

Seconded by: Sen Zien

Clearinghouse Rule: 00-011, 00-021, 00-022

AB: _____ SB: _____

Appointment: _____

AJR: _____ SJR: _____

Other: _____

AR: _____ SR: _____

A/S Amdt: _____

A/S Amdt: _____ to A/S Amdt: _____

A/S Sub Amdt: _____

A/S Amdt: _____ to A/S Sub Amdt: _____

A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- Passage *see motion*
 Introduction
 Adoption
 Rejection

- Indefinite Postponement
 Tabling
 Concurrence
 Nonconcurrence
 Confirmation

Committee Member

Sen. Jim Baumgart, Chair

Sen. Russell Decker

Sen. Roger Breske

Sen. David Zien

Sen. Margaret Farrow

<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Totals: 5 0 0 _____

Motion Carried

Motion Failed

CLEARINGHOUSE RULES 00-011,
00-021 and 00-022

MOTION

Moved by Senator _____, Seconded by Senator _____

THAT the Senate Labor Committee requests the Department of Employee Trust Funds to delay the submission of Clearinghouse Rules 00-011, 00-021 and 00-022 to the Revisor of Statutes for publication until the Wisconsin Supreme Court has ruled on the validity of 1999 Wisconsin Act 11; and

THAT, if the Department, on or before May 9, 2000, does not provide the Committee with a written assurance that it will submit Clearinghouse Rules 00-011, 00-021 and 00-022 to the Revisor for publication after the Court has ruled on the validity of Act 11, the rulemaking orders are objected to in their entirety pursuant to s. 227.19 (4) (d) 1, Stats.

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Laura D. Rose,
Interim Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 00-021

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. The analysis to the rule refers to 1999 Wisconsin Act 11 withstanding judicial review. In fact, implementation of Act 11 has been enjoined. It is presumed that the changes the rule proposes will not be submitted for promulgation until such time as Act 11 is upheld by the Wisconsin Supreme Court. However, the rule only provides for a general effective date of the first day of the month following publication. If it is the department's intent to submit the rule for publication only after Act 11 is upheld, the analysis should indicate that fact. Otherwise, if the rule is promulgated prior to Act 11 being upheld, the changes made by the rule would be without any statutory basis.

b. The second sentence of s. ETF 10.31 (1) seems to imply that participants who canceled participation in the variable fund after January 1, 1999 may not elect to participate in the fund. Section 40.04 (7), Stats., as affected by 1999 Wisconsin Act 11, does not seem to provide authority for such treatment. The rule should identify its authority for this treatment.

2. Form, Style and Placement in Administrative Code

The renumbering of s. ETF 10.35 should follow the repeal and recreation of s. ETF 10.31.

4. Adequacy of References to Related Statutes, Rules and Forms

a. The "Authority for Rule" portion cites s. 227.24, Stats. That provision governs emergency rule-making. This rule is not an emergency rule. This citation should be revised to one that provides the department with authority for this rule. Perhaps the citation should be to s. 227.11 (2) (a), Stats.

b. It might be helpful if notes were added to the rule in s. ETF 10.31 (3) identifying the statutory conditions specified in s. 40.04 (7) (a) 1. and 2.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The notice of the hearing attached to the rule indicates that the public record on the "emergency rule" will be held open. The rule submitted to the Clearinghouse is not an emergency rule. The notice should not refer to an emergency rule.

b. In several places, the analysis to the rule refers to "1999 WA 11." It should refer to "1999 Wisconsin Act 11."

c. The title to s. ETF 10.31 (1) does not seem to fit with the substance of the subsection, in that a "purpose" section typically identifies what the purpose of the provision is. [See, for example, s. ETF 11.01 (1).] A more accurate title may help make the rule more clear for readers not familiar with the rule.

d. The first sentence of s. ETF 10.31 (1) is awkward and, apparently, partially redundant. To clarify the sentence, the first portion could be rewritten substantially as follows: "Pursuant to s. 40.04 (7), Stats., an election to participate, or to cancel participation, in the variable trust fund shall" In addition, in light of the last sentence of the subsection, it appears that the material following the first use of the word "department" in the first sentence can be deleted. If necessary, the last sentence could be modified to more clearly apply to future contributions. Also, the phrase "Participants that" in the second sentence should be changed to "Participants who."

e. In s. ETF 10.31 (3) (a), the term "elected" should be changed to "elects" and the term "cannot" should be changed to "may not." In par. (b) (intro.), the phrase "one of the following bases" should be inserted before the colon. In subd. 1., "; or" should be replaced by a period. Also, because of the "exception" in par. (a), par. (c) may be clarified by replacing the term "cannot" with "may" and the word "unless" with "only if." Finally, the word "become" in par. (c) should be changed to "becoming."

f. The rule renumbers s. ETF 10.35, which refers to an election to "terminate" participation. The portion of the rule into which that provision is renumbered, however, refers consistently to an election to "cancel" participation. Is there a difference between terminating and canceling participation? If not, consistent terminology should be used throughout the rule.

Response to Legislative Council Staff Recommendations

The Legislative Council Staff recommendations have been implemented with the exception of the second *Adequacy of References to Related Statutes, Rules and Forms* recommendation. This recommendation was to add a note to s. ETF 10.31(3) identifying the statutory conditions specified in s. 40.04(7) (a) 1. and 2. In the repeal and recreation of s. ETF 10.31, s. ETF 10.31(3) was not modified from the existing rule except to renumber it from s. ETF 10.31(2) to s. ETF 10.31(3). The complex conditional bases for terminating participation in the variable trust fund remain unchanged from the existing rule.

The Legislative Council Staff recommendations have been implemented as follows:

Statutory Authority

- a. The analysis of the rule now includes more detail on when the rule will be submitted for publication in relationship to implementation of 1999 Wisconsin Act 11.
- b. The rule identifies s. 40.04 (7)(b), Stats., as the authority prohibiting participants who elected to terminate participation in the variable trust fund with an effective date of January 1, 2000 from re-electing participation in the variable trust fund.

Form Style and Placement

- a. The renumbering of s. ETF 10.35 has been moved and now follows the repeal and recreation of s. ETF 10.31

Adequacy of References to Related Statutes, Rules and Forms

- a. The "Authority for Rule" citation has been corrected to s. 227.11(2)(a).

Clarity, Grammar, Punctuation and Use of Plain Language

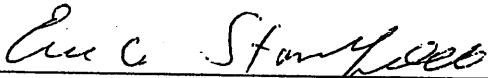
- a. The hearing notice reference has been changed to delete the word "emergency."
- b. 1999 Wisconsin Act 11 is spelled out whenever it is used.
- c. The title to s. ETF 10.31(1) has been changed from "Purpose" to "Effective Dates of Participation."
- d. In s. 10.31(1), the sentences have been revised and reordered to clarify the section. Where used, the phrase "participants that" has been changed to "participants who."
- e. In s. ETF 10.31(3)(a), the term "elected" has been changed to "elects," and the term "cannot" has been changed to "may not." A colon has been inserted as recommended in par. (b) (intro.) and in subd. 1, "; or" was replaced by a period. Par. (c) was clarified by replacing the term "cannot" with "may" and the word "unless" with "only if." Finally, the word "become" in par. (c) was changed to "becoming."
- f. By changing the word "cancel" to "terminate" whenever it is used within the rule, the terminology is made consistent throughout the rule.

Board Authorizations for Promulgation

The Employee Trust Funds Board, at its meeting on March 10, 2000, and both the Teacher Retirement and Wisconsin Retirement Boards, at their respective meetings on March 9, 2000, duly approved this final draft report on Clearinghouse Rule #00-021 for submission to the Legislature and for promulgation.

Respectfully Submitted,

DEPARTMENT OF EMPLOYEE TRUST FUNDS



Eric O. Stanchfield, Secretary
Wisconsin Department of Employee Trust Funds

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Laura D. Rose, Interim Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-021

AN ORDER to renumber ETF 10.35; and to repeal and recreate ETF 10.31, relating to participation in the variable trust fund.

Submitted by **DEPARTMENT OF EMPLOYE TRUST FUNDS**

01-31-00 RECEIVED BY LEGISLATIVE COUNCIL.
02-18-00 REPORT SENT TO AGENCY.

RS:RJC:rv;jal

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

DATE: April 17, 2000
TO: SENATOR JAMES BAUMGART, CHAIRPERSON, SENATE COMMITTEE
ON LABOR
FROM: Dan Fernbach, Senior Staff Attorney
SUBJECT: Committee Options on Clearinghouse Rules

You have scheduled a public hearing for Tuesday, April 18, 2000, on three sets of Clearinghouse Rules (CHRs 00-011, 00-021 and 00-022), submitted by the Department of Employee Trust Funds (DETF), relating to the implementation of 1999 Wisconsin Act 11.

As you know, Act 11, among other things, provides a higher Wisconsin Retirement System (WRS) formula factor for creditable service performed prior to January 1, 2000. According to DETF, the above-cited rule-making orders are necessary:

1. To determine how certain types of creditable service are allocated as pre-2000 or post-1999 service (CHR 00-022);
2. To provide equitable treatment for annuitants who retire in 1999 (CHR 00-011); and
3. To implement the Act's provisions that provide for a limited reopening of the Variable Trust Fund (CHR 00-021).

As noted in DETF's analysis of CHR 00-021, implementation of Act 11 *was enjoined* by the courts on December 29, 1999 until the act is reviewed by the Wisconsin Supreme Court to determine its validity. However, the Department intends to promulgate and submit the rules for publication at this time but repeal them at a later date if Act 11 is not upheld by the Supreme Court.

At an executive session following the Labor Committee's scheduled April 18 public hearing on the proposed rules, if the members believe that the rules should not be promulgated until the Supreme Court upholds the provisions of Act 11, the committee could take any of the following actions:

1. Vote to *formally object* to the proposed rules pursuant to s. 227.19 (4) (d), Stats.
2. Same as above, *unless* DETF provides the committee with a *written assurance* prior to the end of its review period that it will not submit the rules to the Revisor of Statutes for publication until the Supreme Court has ruled on the validity of Act 11.
3. Request the department to withdraw the proposed rules but adopt them as *emergency rules* at a later date if and when Act 11 is upheld by the Supreme Court.

Finally, the committee could *take no action*, which would permit the proposed rules to take effect without delay on the first day of the month following publication.

DF:jal;rv



STATE OF WISCONSIN

Department of Employee Trust Funds

Eric O. Stanchfield

Secretary

801 West Badger Road

P.O. Box 7931

Madison, WI 53707-7931

APR 27 2000

April 26, 2000

HONORABLE JAMES BAUMGART
STATE SENATE
CHAIR, SENATE COMMITTEE ON LABOR
306 SOUTH, STATE CAPITOL
P.O. BOX 7882
MADISON WI 53707-7882

RE: Clearinghouse Rule #00-011, Clearinghouse Rule #00-021 and Clearinghouse Rule #00-022

Dear Senator Baumgart:

I am writing in response to action taken by the Senate Committee on Labor concerning promulgation of three Department of Employee Trust Funds Clearinghouse Rules: CR #00-011 relating to distribution to annuitants of the total amount distributed from the transaction amortization account to the annuity reserve under the non-statutory provisions of 1999 Wisconsin Act 11; CR #00-021 relating to the participation in the variable trust fund; and CR #00-022 relating to the Department's interpretation of what Wisconsin Retirement System (WRS) creditable service is considered performed before January 1, 2000 versus considered performed on or after that date under 1999 Wisconsin Act 11.

On March 27, 2000, Senator Judy Robson, Co-Chair of the Joint Committee on Review of Administrative Rules, sent a letter to you and Representative Steve Wieckert urging both the Senate Committee on Labor and the Assembly Committee on Government Operations to ensure that all three Clearinghouse Rules were not promulgated. The delay in promulgation was requested because Legislative Clearinghouse comments during the review period on the rules took the position that since implementation of 1999 Wisconsin Act 11 was enjoined by the Wisconsin Supreme Court, there was no statutory authority for the rules.

On April 18, 2000, the Senate Committee on Labor held a public hearing on the above three Clearinghouse Rules. The Committee unanimously passed a motion that required the Department to delay submission of these rules to the Revisor of Statutes for publication until the Wisconsin Supreme Court has ruled on the validity of 1999 Wisconsin Act 11. In addition, the Department, on or before May 9, 2000, was asked to provide written assurance that it will submit the three rules to the Revisor for publication only after the Court has ruled on the validity of Act 11. In the absence of this assurance, the Committee plans to object to the three rules in their entirety.

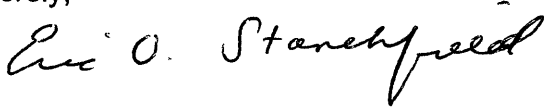
The Employee Trust Funds Board, the Department and I requested a preliminary injunction barring implementation of 1999 Wisconsin Acts 11 and 12 from the Supreme Court when we filed our petition for original jurisdiction and requested to have the petition stand as a complaint seeking declaratory judgment. The Supreme Court granted the preliminary injunction in its order dated December 29, 1999, but included the following:

Notwithstanding the foregoing, the petitioners [*ETF Board, DETF and Secretary*] are not enjoined from taking such contingent and preparatory measures towards implementation of this legislation as they deem appropriate in their discretion and consistent with their fiduciary and other duties and responsibilities for administering the terms of the public employe trust fund. Any question raised by either party regarding the propriety of any particular contingent and preparatory measure toward implementation shall immediately be brought before this court for resolution;

A copy of the preliminary injunction is enclosed for your information. (*Employe Trust Funds Board, et al. v. Lightbourn, et al.*, No. 99-3297-OA, Supreme Court Order dated December 29, 1999, page 2.)

Even though the Department believes the Court's exception in the preliminary injunction provides the statutory authority to promulgate the above three rules, I am providing my written assurance that the Department will not submit Clearinghouse Rules #00-011, #00-021 and #00-022 to the Revisor of Statutes for publication until the Court has ruled on the validity of Act 11.

Sincerely,



Eric O. Stanchfield
Secretary

Enclosure

cc: Committee Members, Senate Committee on Labor
Senator Judith Robson, Co-Chair, Joint Committee on Review of Administrative Rules
Rep. Glenn Grothman, Co-Chair, Joint Committee on Review of Administrative Rules
Rep. Steve Wieckert, Assembly Committee on Government Operations
Gary Poulson, Deputy Revisor, Revisor of Statutes Bureau

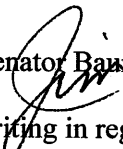


Judith B. Robson
Wisconsin State Senator

March 27, 2000

Senator James Baumgart, Room 306 South
Representative Steve Wiecek, Room 9 North

Re: Clearinghouse Rule 00-021 (ETF 10, participation in the variable trust fund)

Dear Senator  Baumgart and Representative Wiecek:

I am writing in regards to Clearinghouse Rule 00-021, relating to participation in the variable trust fund. This rule was recently referred to your committees. Please give it careful scrutiny, especially the comments of the Legislative Clearinghouse regarding the statutory authority of the rule.

This rule is based on 1999 Act 11. The courts have enjoined this act pending review by the state Supreme Court. Until the act is implemented, there is no authority for the rule.

The department is proposing to promulgate the rule and then repeal it if the Supreme Court does not uphold the statute. This is improper. Promulgation of the rule should not occur if the statute on which it is based has not yet gone into effect.

A better procedure would be to allow the rule to go through the legislative process with a commitment from the agency that the agency will not file the rule with the Revisor of Statutes and the Secretary of State until Act 11 is upheld by the courts. Then, if the law is overturned, the rule could be withdrawn by the agency.

I am sure that you agree with me that the legislature needs to be diligent in its review of administrative rules. Rules are an extension of the statutes, which only the legislature has authority to create. Allowing a rule that has no basis in the statutes to go into effect is an assault on the integrity of the legislature.

I urge you to negotiate with the agency regarding CR 00-021 in order to ensure that the rule is not promulgated until the statute on which it is based actually becomes law.

Sincerely,



Senator Judith B. Robson
15th Senate District

JBR:da

15 South, State Capitol, Post Office Box 7882, Madison, WI 53707-7882 • Telephone (608) 266-2253

District Address: 2411 East Ridge Road, Beloit, WI 53511

Toll-free 1-800-334-1468 • E-Mail: sen.robson@legis.state.wi.us

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STATE OF WISCONSIN

Department of Employee Trust Funds

Eric O. Stanchfield
Secretary
801 West Badger Road
P.O. Box 7931
Madison, WI 53707-7931

March 16, 2000

THE HONORABLE FRED A RISSER
PRESIDENT OF THE SENATE
C/O DONNA DOYLE
SENATE JOURNAL AND RECORDS
ONE EAST MAIN STREET, SUITE 402
MADISON WI 53702

Re: Clearinghouse Rule #CR 00-021 to repeal and recreate ETF 10.31 and renumber ETF 10.35, Wisconsin Administrative Code, relating to participation in the variable trust fund.

Dear Senator Risser:

In accordance with Wis. Stats. § 227.19 (2), I am enclosing a copy of this proposed rule in final draft form. The report required under Wis. Stats. § 227.19 (3) is also enclosed.

Please contact Pam Henning, Director of Legislation and Planning, at 267-2929 if you have any questions.

Sincerely,

Eric O. Stanchfield
Secretary

Enclosure

**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYE TRUST FUNDS**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE 00-021

AN ADMINISTRATIVE RULE repealing and recreating ETF 10.31 and renumbering ETF 10.35, Wisconsin Administrative Code, relating to participation in the variable trust fund.

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Agency Person to Be Contacted for Substantive Questions

For information about this rule, please contact: Shelly Schueller, Benefit Plan Policy Analyst, Division of Retirement Services, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931. Telephone: (608) 266-6611.

Statement Explaining Need for Rule

The rule is intended to clarify the Department's administrative policy and procedures regarding election and termination of participation in the Variable Trust Fund. If 1999 Wisconsin Act 11 is upheld by the courts and the ETF Board takes no action to revise the existing administrative rule, the result will be uncertainty and confusion regarding when a participant may elect or terminate participation in the Variable Trust Fund and the effective date of such an election.

Analysis Prepared by Department of Employee Trust Funds

Authority for rule: Wis. Stat. § 227.11 (2) (a)

Legislation interpreted: 1999 Wis. Act 11, § 14, a statutory provision concerning participation in the Variable Trust Fund.

Wis. Stat. § 40.04 (7) (a) closed the Variable Trust Fund to new enrollments effective April 29, 1980. Participants who elected to join the Variable Trust prior to that date remain in the program unless they elect to terminate their participation. Once a participant has terminated participation in the Variable Trust Fund, until 1999 Wisconsin Act 11 is implemented there is no opportunity to re-elect variable participation.

1999 Wisconsin Act 11 amends Wis. Stat. § 40.04 (7) (a) to permit all participating employees on or after January 1, 2001 to elect to have 50% of their future and additional contributions deposited in the Variable Trust Fund. 1999 Wisconsin Act 11 also provides former Variable Trust Fund participants who have terminated their original variable participation with one option to re-enroll. The new election would apply only to future employee, employer and additional contributions; participants would not be eligible to transfer contributions balances into the Variable Trust Fund.

Implementation of 1999 Wisconsin Act 11 was enjoined by the courts on December 29, 1999. Until the legal review of 1999 Wisconsin Act 11 is complete, the existing language in § ETF 10.31 regulates participation in the Variable Trust Fund. However, if 1999 Wisconsin Act 11 withstands review by the courts and must be implemented, then § ETF 10.31 must be revised to reflect the re-opening of the Variable Trust Fund to active WRS participants. The rule must clarify when and how a participant may elect or terminate participation in the Variable Trust

Fund, the effective date of such an election, and the irrevocability of an election once received by the Department. The proposed revisions to § ETF 10.31 will be promulgated and submitted for publication and will be repealed if 1999 Wisconsin Act 11 is not upheld by the courts.

Under the proposed revisions to § ETF 10.31, an election to participate in the Variable Trust Fund would be effective on January 1 of the year after the year in which the Department receives such an election, and would first apply to contributions for the year in which the election is effective. Pursuant to s. 40.04 (7)(b), Stats., any participating employee who participates in the Variable Trust Fund (including participants who are already Variable Trust Fund participants based on an election prior to April 29, 1980) have one opportunity to cancel their Variable Trust Fund participation, and once they elect to terminate their participation, no opportunity to re-enroll exists unless the participant closes his/her WRS account by withdrawing his/her account balance and is no longer a participant, then returns to work for a WRS participating employer and again becomes a participating employee.

Fiscal Estimate

The rule has no fiscal impact on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues. This rule has no anticipated state fiscal effect during the current biennium and no future effect on state funds, which do not include the Public Employe Trust Funds.

The Department of Employe Trust Funds anticipates some cost to the Public Employe Trust Funds in administering this rule. These costs include one-time costs for revising participant brochures and forms and reprogramming computer systems to handle the new variable program, and on-going costs to process election forms and provide participants with information.

Final Regulatory Flexibility Analysis

This rule does not affect small businesses.

Text of Proposed Rule

(BEGINNING OF RULE TEXT)

SECTION 1 ETF 10.31 IS REPEALED AND RECREATED TO READ:

ETF 10.31 Variable trust fund participation

(1) EFFECTIVE DATES OF PARTICIPATION. Pursuant to s. 40.04 (7), Stats., an election to participate, or terminate participation, in the variable trust fund shall be made on a form provided by the department. Except as provided in sub. (2), the election to participate in the variable trust fund shall become effective for future contributions on the January 1 following receipt of the form by the department. Participants who elected to terminate participation in the variable trust fund effective on or before January 1, 1999 may elect to participate in the variable trust fund as provided in this section. Pursuant to s. 40.04 (7)(b), Stats., participants who elected to terminate participation in the variable trust fund with an effective date of January 1, 2001 may not re-elect to participate in the variable trust fund.

Note: Election forms can be obtained from the following address: Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931.

(2) VARIABLE TRUST FUND PARTICIPATION FOR NEW PARTICIPANTS. A person becoming a new participant on or after January 1, 2001 may elect immediate participation in the variable trust fund providing that the department receives the form no later than 30 calendar days after the start of the employe's participating employment. Initial elections to participate in the variable trust fund that are received by the department after this opportunity expires shall be effective on the January 1 following receipt of the form by the department.

(3) TERMINATING PARTICIPATION IN THE VARIABLE TRUST FUND.

(a) Except as provided in par. (c), a participant who elects to terminate participation in the variable trust fund on or after January 1, 2001 may not re-elect to participate.

(b) A participant may elect to terminate participation in the variable trust fund and transfer the participant's variable annuity contribution accumulations to the fixed division on one of the following bases:

1. An unconditional basis effective the January 1 following receipt of the form by the department.

2. A conditional basis as follows:

a. For annuitants, effective the first January 1 after receipt of the form by the department on which the condition under s. 40.04 (7) (a) 1., Stats., is satisfied.

b. For all other participants, effective the first January 1 after receipt of the form by the department on which the condition under s. 40.04 (7) (a) 2., Stats., is satisfied.

(c) A participant who elects to terminate participation in the variable trust fund on or after January 1, 2001 may re-elect to participate in the variable trust fund only if the participant ceases to be a participant by closing the participant's account through taking a benefit under s. 40.25, Stats., and subsequently becoming a new participating employe.

(5) END OF CALENDAR YEAR DETERMINATIONS. For purposes of this section, whenever the last day of the year falls on a Saturday, Sunday or holiday when state offices are closed, an election to participate or terminate variable participation or to transfer variable annuity contribution accumulations to the fixed division which is received on the next succeeding working day shall be deemed to have been received within the preceding calendar year.

SECTION 2 ETF 10.35 IS RENUMBERED ETF 10.31(4)

(END OF RULE TEXT)

Effective Date

This rule shall take effect on the first day of the month commencing after the date of publication as provided by Wis. Stat. § 227.22 (2) (a).

Explanation of Modifications as Result of Testimony at Public Hearing

No modifications were made to the proposed rule as a result of testimony received at the public hearing.

List of persons appearing or registering for or against the rule

A public hearing on this proposed rule was held on February 29, 2000, at 9:00 a.m. in Conference Room 2B at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin. No persons attended the hearing. The record of the hearing was held open until 4:30 p.m. on Wednesday, March 1, 2000, to permit persons who were unable to attend the public hearing in person to submit written comments on the proposed rule. No written comments on the rule were received.

**Testimony on
Clearinghouse Rule 00-011 – Annuitant Dividend Distribution
Clearinghouse Rule 00-021 – Participation in the Variable Fund
And
Clearinghouse Rule 00-022 – Interpretation of Creditable Service under 1999 WI Act 11**

By the Department of Employee Trust Funds

Senate Labor Committee – April 18, 2000

Thank you Chairperson Baumgart and Committee Members for the opportunity to provide information on the three Clearinghouse Rules before you. I am Pam Henning, Director of Legislation and Planning at the Department of Employee Trust and sitting next to me are Linda Owen and Shelly Schueller, Policy Analysts for the Division of Retirement Services, at ETF.

Each of the Clearinghouse Rules clarifies the Department's administrative policy and procedures relating to the implementation of provisions within 1999 Wisconsin Act 11, if upheld by the courts.

Clearinghouse Rule 00-011 – Annuitant Dividend Distribution

Under current law, the fixed dividend granted to an annuitant in the first year after retirement is prorated and based upon the number of full months that the participant was retired during that year.

Under Act 11, \$4 billion from the transaction amortization account (TAA) is transferred to the reserves of the fixed retirement investment fund, including the employe, employer and annuity reserve. The portion of the funds credited from the TAA transfer to the annuity reserve would provide a higher fixed annuitant dividend (approximately 10%).

The rule creates an exception for the portion of the dividend granted in 2000 that is based upon the funds transferred from the TAA. While the normal fixed dividend in 2000 will still be prorated for participants who retired during 1999, the full amount of the special dividend based on the \$4 billion transferred from the TAA will NOT be prorated. This is effective for participants who retired with annuity effective dates after December 31, 1998 and before January 1, 2000.

Clearinghouse Rule 00-021 – Participation in the Variable Fund

Since April 29, 1980, the variable trust fund has been closed to participants under the Wisconsin Retirement System. All participants who elected to join the variable fund prior to that date remain in the program unless they elect to terminate their participation. Once a participant terminates from variable fund participation, there is no ability to re-elect variable participation.

Act 11 does the following:

- Permits all participating active employes under the WRS on or after January 1, 2001 to elect to have 50% of their future contributions deposited in the variable trust fund;
- Applies only to future contributions; participants cannot transfer existing account balances into the variable fund.

The rule does the following:

- Permits former variable fund participants who cancelled variable participation an opportunity to re-enroll;
- Clarifies that an election into the variable fund is effective on the January 1st of the year after the election is received by the Department for existing active employees; and
- Clarifies that for new WRS participants, variable participation is immediate if ETF receives their election form within 30 calendar days after WRS coverage begins.

Clearinghouse Rule 00-022 – Interpretation of Creditable Service under 1999 WI Act 11

Act 11 provides a higher formula factor for service performed before January 1, 2000. Act 11 provides some clarification of what creditable service should be considered to be performed before January 1, 2000, but further clarification is required for our Department to administer these provisions.

The rule clarifies the treatment of all creditable service for purchased service, military service, prior service purchased by a WRS employer, assumed service for WRS disability benefits and for service divided per a qualified domestic relations order (QDRO).

Thank you for your time. We'd be happy to answer any questions you may have on the rules.