

Clearinghouse Rule 12-020
State of Wisconsin
Department of Employee Trust Funds,
Employee Trust Funds Board, and Teachers Retirement Board

DRAFT REPORT ON CLEARINGHOUSE RULE

AN ORDER 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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Economic Impact Report.....	SEE EIA
Department of Administration s. 227.138 Report.....	NONE
Energy Impact Report.....	NONE

Agency Person to be Contacted for Questions

Please direct any questions about this rule-making to 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.

Statement Explaining Need for Rule

ETF seeks to clarify the Secretary's authority under § 40.03 (2) (p), Stats., to choose alternate means of holding elections of members to the Teachers Retirement Board and Employee Trust Funds Board. When warranted, holding board elections electronically can promote efficiency and minimize costs. Additional changes to the rule are made for the simplification of the elections provisions.

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.

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

1 Section 1. **ETF 10.10 (1), (1m) and (2) are amended to read:**

2
3 **ETF 10.10 Employee trust funds board and teachers retirement board**
4 **elections. (1) ~~The purpose of this PURPOSE. This section is to set forth~~**
5 **~~establishes~~ procedures for all elections of ~~participating employees and~~**
6 **~~annuitants persons~~ to the employee trust funds board or the teachers**
7 **retirement board, pursuant to ss. 15.16 (1) (d) and (f), 15.165 (1) and (3)**
8 **(a) 1., 2., 6. and 7., and 40.03 (2) (p), Stats. Except where noted**
9 **otherwise, ~~these~~ procedures ~~established in this section~~ shall apply for**
10 **elections to either the employee trust funds board or the teachers**
11 **retirement board.**

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13 **(1m) DEFINITIONS. In this section:**

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

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

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

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

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

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

27
28 **(2) SCHEDULING OF ELECTIONS. The secretary shall schedule an election**
29 **when the term for an elective board position ~~on the employee trust funds~~**
30 **~~board or the teachers retirement board~~ is due to expire or the position is**
31 **vacated ~~due to resignation, death or~~ for any ~~other~~ reason.**

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32 **(a) Regular elections. When a term is due to expire, the secretary shall**
33 **schedule the election to ~~as~~ensure that the election is completed and the**
34 **new board member announced prior to the date the new term**
35 **commences.**

36 **(b) Vacancies. If an elective board position is vacant for any reason other**
37 **than the term expiring, the secretary shall schedule an election at a time**
38 **determined by the secretary. The annuitant or participating employee**
39 **elected in an election to fill a position vacated prior to the end of a term**
40 **shall serve the remainder of the unexpired term.**

45 Section 2. **ETF 10.10 (3) and (4) are repealed and recreated to read:**

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(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

92 *the new 10.10 (7) ELIGIBILITY TO VOTE, and 10.10 (8) DISTRIBUTION PROCEDURES FOR*
93 *PAPER BALLOTS.*

94
95 Section 3. **ETF 10.10 (5) is created to read:**
96

97 **(5) NOMINATIONS FOR THE EMPLOYEE TRUST FUNDS BOARD.** Any person who
98 meets the eligibility requirements of s. 15.16 (1) (d) or (f), Stats., on the
99 date the person files nomination papers with the department and who
100 plans to continue meeting the eligibility requirements upon election, may
101 be nominated for election to the employee trust funds board by satisfying
102 the requirements of par. (4) (a) through (c) within the calendar dates
103 established by the department.
104

105 Section 4. **ETF 10.10 (6) and (7) are repealed and recreated to read:**
106

107 **(6) NOMINATIONS FOR THE TEACHERS RETIREMENT BOARD.** Any person who
108 meets the eligibility requirements of s. 15.165 (3) (a) 1., 2., 6. or 7., Stats.,
109 on the date the person files nomination papers with the department and
110 who plans to continue meeting the eligibility requirements upon election,
111 may be nominated for election to the teachers retirement board by
112 satisfying the requirements of par. (4) (a) through (c) within the calendar
113 dates established by the department.
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115 *Drafting Note (not for inclusion in final rule): Language in the old 10.10 (6) relates to*
116 *eligibility to vote, and has been moved, with some amendments, to the new 10.10 (7)*
117 *ELIGIBILITY TO VOTE.*

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119 **(7) ELIGIBILITY TO VOTE.**

120 (a) *General requirements.* A person shall be eligible to vote if the
121 person is an annuitant or participating employee in the election
122 category for which the election is being held and meets the other
123 voting eligibility requirements in this section at the time ballot
124 materials are printed for distribution and the department has record
125 of their eligibility.

126 (b) *Teachers retirement board elections.* Participating employees of
127 the state department of public instruction; state department of
128 health services; state technical college system; and the state
129 educational communications board, who are classified as teachers
130 under the Wisconsin retirement system, are not employed by a
131 public school or a technical college system district and may not
132 vote in any election to elect a teacher to serve on the teachers
133 retirement board.

134 (c) *Teacher in public school and a technical college system district.*
135 For a teacher concurrently employed by both a public school and a
136 technical college system district, the teacher shall be eligible to vote
137 in both categories specified under s. 15.165 (3) (a) 1. and 2., Stats.
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140 *Drafting Note (not for inclusion in final rule): Language in the old 10.10 (7) relating to*
141 *nomination to the Teachers Retirement Board has been moved, with some*
142 *amendments, to the new 10.10 (5) NOMINATION TO THE TEACHERS RETIREMENT BOARD.*
143 *Language in the old 10.10 (7) relating to nominations to the Employee Trust Funds*
144 *Board is in the new 10.10 (6). Provisions relating to nomination procedures in the old*
145 *10.10 (7) are in the new 10.10 (4) NOMINATION PROCEDURES.*

146
147 Section 5. **ETF 10.10 (8) is amended to read:**

148
149 **(8) DISTRIBUTION PROCEDURES FOR PAPER BALLOTS. This subsection shall**
150 **only apply to elections that are conducted using paper ballots as directed**
151 **by the secretary. If an election is conducted using a combination of**
152 **electronic and paper ballots, this subsection shall apply only to the paper**
153 **ballots used in that election.**

154 (a) *Ballot format.* The department shall print ballots with the
155 candidates' names in alphabetical order and shall include, when the
156 ballots are distributed, instructions for marking the ballot and the
157 deadline for its return.

158 (b) *Distribution of ballots to participating employees.* At the direction
159 of the secretary, ballots can be distributed either through employers
160 or directly to participating employees. If distributed through
161 employers, the department shall send each employer one ballot
162 individually labeled with the participating employee's name for each
163 participating employee in the election category for which the
164 election is being held who is employed by the employer and whose
165 position is known to the department. A distribution list, prepared by
166 the department and containing the names of participating
167 employees for whom ballots are included, shall accompany the
168 ballots. The department shall require employers to verify, by signing
169 the distribution list, that the employer distributed the ballots within
170 30 days of the date they were mailed by the department. The
171 employer shall indicate on the distribution list which ballots could
172 not be distributed and shall return the undistributed ballots.

173 (c) *Distribution of ballots to annuitants.* The department shall send a
174 ballot directly to each annuitant who is eligible to vote in that
175 election at the last home address the department has on file.

176 (d) *Distribution of ballots to teachers with multiple employment*
177 *locations.* If a teacher is employed in more than one employment
178 location within an election category specified under s. 15.165 (3) (a)
179 1. or 2., Stats., the department shall provide a paper ballot to only
180 one location as determined by the department.

181 (e) *Distribution of ballots to teachers employed in a public school*
182 *and a technical college system district.* For a teacher concurrently
183 employed by both a public school and a technical college system
184 district, the department shall provide a ballot to both locations.

185
186 Section 6. **ETF 10.10 (9) is repealed and recreated to read:**

187
188 **(9) VOTING.** The secretary may conduct the election by any appropriate
189 means, including paper ballots, electronic ballots, or a combination of such
190 methods.

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191 (a) *Voting procedure.* The secretary shall approve a secure voting
192 procedure that ensures that only persons eligible to vote are
193 permitted to cast a vote, and that only one vote is recorded for each
194 person who casts a vote in an election. Persons eligible to vote
195 shall cast their votes by indicating their choice of candidates in
196 accordance with voting instructions approved by the secretary.

197 (b) *Voting when there are multiple teachers retirement board*
198 *positions to be filled.* If there is more than one teachers retirement
199 board position to be filled in an election category and an election is
200 held, voters may vote for as many candidates, in the appropriate
201 election category, as there are positions to be filled.

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203
204 Section 7. **ETF 10.10 (10) is amended to read:**

205
206 **(10) CERTIFICATION OF ELECTION RESULTS.** ~~If an election is held, the~~
207 ~~respective The teachers retirement~~ board shall appoint an election
208 committee that shall consist of the secretary of the department or the
209 secretary's designee and 2 ~~teachers retirement~~ board members who are
210 ~~not running for reelection to determine the election results. The employee~~
211 ~~trust funds board shall appoint an election committee which shall consist~~
212 ~~of the secretary of the department or the secretary's designee and 2~~
213 ~~employee trust funds board members who are not running for reelection to~~
214 ~~determine the election results.~~ A majority of the election committee
215 appointed by the respective boards shall determine the validity of ballots
216 set aside by the department and certify the election results.

217
218 Section 8. **ETF 10.10 (11) is amended to read:**

219
220 **(11) VERIFICATION OF ELECTION RESULTS.** ~~The department shall review each~~
221 ~~ballot by checking the signature against the name on the ballot.~~ The
222 department shall set aside ballots~~votes~~ that it believes may be invalid
223 under pars. (a) to (dg) for review by the election committee. The election
224 committee shall deem a ballot~~vote~~ invalid if any of the following apply.

225 (a) The signature is not the same as the name on the ballot.

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- (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

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272 category has within it six positions that are elected. If there are two open public school
273 teacher positions, voters can vote for two candidates in an election for that position.
274 There is no equivalent language for the employee trust funds board because that
275 board's elected categories only permit one person to fill a position, i.e., one annuitant
276 representative and one educational support personnel representative.

277
278 Section 11. **ETF 10.10 (15) is renumbered 10.10 (13) and amended to read:**

279
280 (13) **TABULATION OF VOTES.** Candidates receiving the largest number of
281 votes shall be elected. The election committee shall break a tie by the
282 drawing of lots. The counting of ~~ballots~~ votes shall be conducted under the
283 direction of the secretary or designee.

284
285 Section 12. **ETF 10.10 (16) is renumbered 10.10 (14) and amended to read:**

286
287 (14) **NOTIFICATION OF ELECTION RESULTS.** For elections scheduled because
288 a term is due to expire, the department shall notify all candidates of the
289 results by certified mail before May 1 following the close of the election. If
290 the department calls an election for any reason other than the expiration of
291 a term, the department shall notify all candidates by certified mail of the
292 results of the election within 15 days of the close of the election.

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

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296 (15) **RETENTION OF BOARD ELECTION MATERIALS.** The department shall retain
297 election reports, nominating petitions and ballots for 45 days from the date
298 the candidates are notified in sub. (16) at least 1 year after the election is
299 completed. If a candidate wishes to request a recount, the candidate shall
300 submit the request to the department within 30 days of the date the
301 candidates are notified of the election results. A recount shall be
302 conducted under the direction of the secretary or his or her designee.

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

310
311 Section 14. **ETF 10.10 (16) is created to read:**

312
313 (16) **RECOUNT OF RESULTS.** A candidate may request no more than one
314 recount per election. To request a recount, the candidate shall submit a
315 written request to the secretary within 10 business days of the date that
316 the candidates were notified of the certified election results under sub.
317 (14). A recount shall be conducted under the direction of the secretary or
318 designee. If the recount results change the ranking of the candidates, the

319 recount results shall be certified by the election committee under sub. (10)
320 and shall stand as the final election results.

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322 *History: Cr. Register, March, 1984, No. 339, eff. 4-1-84; r. (5) and am. (7)*
323 *(intro.), Register, January, 1985, No. 349, eff. 2-1-85; am. (10), Register, September,*
324 *1992, No. 441, eff. 10-1-92; am. (1) to (7) (a), (7) (c) to (11) (b), (d), (12), (13) and*
325 *(15) to (17), cr. (1m) and (11) (e), r. (14), Register, April, 1993, No. 448, eff. 5-1-93;*
326 *corrections made under s 13.93 (2m) (b) 6., Stats., Register, July, 1997, No. 499; am.*
327 *(1), (1m) (b) and (7) (intro.), Register, December, 2000, No. 540, eff. 1-1-01; correction*
328 *in (6) made under s. 13.92 (4) (b) 6., Stats., Register September 2009 No. 645.*
329

(END OF RULE TEXT)
