

***2003 ANNUAL REPORT  
LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE***

**WISCONSIN LEGISLATIVE COUNCIL**

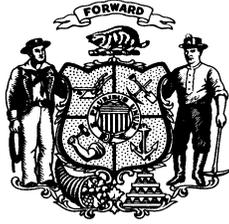
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**February 2004**

State of Wisconsin  
JOINT LEGISLATIVE COUNCIL

*Co-Chairs*  
ALAN LASEE  
President, State Senate

STEVE WIECKERT  
Representative, State Assembly



LEGISLATIVE COUNCIL STAFF  
Terry C. Anderson  
*Director*  
Laura D. Rose  
*Deputy Director*

February 2004

The Honorable James E. Doyle  
Governor  
Room 112 East  
State Capitol  
Madison, WI 53701

Dear Governor Doyle:

This report of the calendar year 2003 activity of the Legislative Council Rules Clearinghouse is submitted to you pursuant to s. 277.15 (5), Stats.

Sincerely,

Terry C. Anderson  
Director

TCA:tlu

## JOINT LEGISLATIVE COUNCIL

s. 13.81, Stats.

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.



**WISCONSIN LEGISLATIVE COUNCIL STAFF**  
**2003 ANNUAL REPORT ON THE**  
**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE\***

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\* This Report was prepared by Ronald Sklansky, Director, and Richard Sweet, Assistant Director, Rules Clearinghouse, Legislative Council.



**FUNCTION OF THE LEGISLATIVE COUNCIL**  
**RULES CLEARINGHOUSE**

**REVIEW OF RULES**

Legislative review of proposed administrative rules begins with the submission of a rule to the Legislative Council Rules Clearinghouse. Section 227.15, Stats., requires that, prior to any public hearing on a proposed rule or prior to notification of the presiding officer of each house of the Legislature if no hearing is held, an agency must submit the proposed rule to the Legislative Council Rules Clearinghouse for staff review. (See the *Administrative Rules Procedures Manual* (October 2002), prepared by the Legislative Council and the Revisor of Statutes Bureau, for more information on drafting, promulgating and reviewing administrative rules.)

The Legislative Council is provided 20 working days, following receipt of a proposed rule, to prepare a report on its review of the rule. However, with the consent of the Director of the Legislative Council, the review period may be extended for an additional 20 working days.

Upon receipt of a proposed administrative rule, a Clearinghouse rule number is assigned and submission of the rule is recorded in the *Bulletin of Proceedings* of the Wisconsin Legislature. Two numbered rule jackets, one for the Assembly and one for the Senate, are prepared.

The Director of the Rules Clearinghouse assigns the rule to a Legislative Council staff member for review and preparation of the statutorily required report. The staff member generally prepares the report within 10 working days and transmits the report to the Director or Assistant Director for final review. When the report on the proposed rule is completed, the staff returns the rule jackets and the Clearinghouse report containing the results of the review to the agency. [See *Appendix 1* for a sample Clearinghouse report.]

In accordance with s. 227.15, Stats., the Clearinghouse report:

1. Reviews the statutory authority under which the agency intends to adopt the rule.
2. Reviews the proposed rule for form, style and placement in the Wisconsin Administrative Code.
3. Reviews the proposed rule to avoid conflict with, or duplication of, existing rules.
4. Reviews the proposed rule to ensure that it provides adequate references to related statutes, rules and forms.
5. Reviews the language of the proposed rule for clarity, grammar and punctuation and to ensure the use of plain language.

6. Reviews the proposed rule to determine potential conflicts and to make comparisons with related federal regulations.

7. Reviews the proposed rule to determine whether the agency has specified the number of business days within which the agency will review and make a determination on an application for a business permit.

As part of this review process, staff of the Legislative Council is directed to ensure that procedures for the promulgation of the rule are followed, as required by ch. 227, Stats., and to streamline and simplify the rule-making process.

### **OTHER RELATED RESPONSIBILITIES**

Other primary rule review responsibilities of the Legislative Council include:

1. Working with and assisting the appropriate legislative committees throughout the rule-making process.

2. Notifying the Joint Committee for Review of Administrative Rules (JCRAR) and appropriate committees of the Legislature whenever the rule-making authority of an agency is eliminated or significantly changed by the repeal, amendment or creation of a statute, by the interpretive decision of a court of competent jurisdiction or for any other reason.

3. Assisting the public in resolving problems related to administrative rules. This function includes providing information, identifying agency personnel who may be contacted in relation to rule-making functions, describing locations where copies of rules, proposed rules and forms are available and encouraging and assisting participation in the rule-making process.

The final responsibility of the Legislative Council is the submission of an annual report to the chief clerk of each house of the Legislature and to the Governor summarizing any action taken by the staff and making recommendations to streamline the rule-making process and eliminate obsolete, duplicative and conflicting rules. This report is the 24th *Annual Report* submitted by the Legislative Council and covers the staff's activities during calendar year 2003. It has been preceded by an initial report to the 1979 Legislature, which covered the staff's activities from November 2, 1979 to April 1, 1980 (i.e., from the effective date of Ch. 34, Laws of 1979, which initiated the omnibus rule review process, to the end of Floorperiod IV of the 1979 Session) and annual reports for calendar years 1980 to 2002.

### **RECORDKEEPING SYSTEM**

The Legislature's *Bulletin of Proceedings* is used for recording actions relating to the review of administrative rules. The Legislative Council, the Senate and Assembly Chief Clerks and the Legislative Reference Bureau cooperate in a computerized recordkeeping system. Commencing with the 1979 Session, action on administrative rules has been shown in a separate part of the *Bulletin of Proceedings*.

Under this system, each proposed rule is assigned a number and entered in the computer by the staff of the Legislative Council. A copy of the Clearinghouse report is placed in a Senate and Assembly rule jacket (similar to bill jackets) and the rule is then transmitted to the agency promulgating the rule for its review. After transmittal, all legislative actions taken on the rule are entered on the face of the jacket and are reported to the chief clerk of each house. The chief clerk enters the actions in the computerized system, thereby compiling a history of all legislative actions taken on the rule.

At the beginning of each biennial session, the administrative rule portion of the *Bulletin of Proceedings* is updated by deletion of all records relating to rules which, in the preceding session, have become effective, have been withdrawn or have been permanently objected to by law. Also removed from the *Bulletin of Proceedings* annually and withdrawn from the rule-making process is any proposed rule that, in accordance with s. 227.14 (6) (c), Stats., has been pending for at least four years, but no more than five years, after the date of its receipt by the Legislative Council under s. 227.15 (1), Stats. The final *Bulletin of Proceedings* printed for the preceding session then serves as the permanent record of the disposition of those rules. The remaining rules, which are still in the promulgation process, are carried over into the new *Bulletin of Proceedings* for the following biennial session.

Access to rules and agency reports over the Internet became available in 2001 for all rules initiated after 2000. These materials may be found at the Legislature's website, [www.legis.state.wi.us](http://www.legis.state.wi.us), by using the Services Agencies and Joint Legislative Council and Staff icons.



**2003 ACTIVITIES OF THE RULES CLEARINGHOUSE**

During 2003, 126 proposed administrative rules were submitted to the Legislative Council by 24 state agencies.

As of December 31, 2003, Clearinghouse reports had been completed on 115 of the 126 proposed rules and 9 rules were in the process of review. Two rules were withdrawn prior to the preparation of a report. In addition to the 115 rule reports completed on 2003 rules, reports were prepared in 2003 on 12 rules received in late 2002. Of the 127 reports completed in 2003, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse activities in 2003 are summarized below:

Rules Received in 2003		126
Withdrawn	2	
No report required	0	
Pending	9	
		-11
2003 Reports Completed		115
2002 Reports Completed in January 2003		+12
<b>Total Reports in 2003</b>		<b>127</b>

The table below shows that, from November 2, 1979 (the beginning of the omnibus rule review process) through December 31, 2003, the Clearinghouse has received 5,126 rule submissions and completed reviews on 5,030 proposed rules. Of the total rule submissions, 87 were exempt from the reporting process for various reasons and 9 were under review at the end of 2003.

<i>Year</i>	<i>Received</i>	<i>Completed</i>	<i>Exempt</i>
1979	70	45	12
1980	252	227	24
1981	252	234	9
1982	251	254	3
1983	222	220	4
1984	255	247	2
1985	213	206	4
1986	251	252	4
1987	182	186	1
1988	219	216	5
1989	212	208	1
1990	264	254	3
1991	199	205	2
1992	225	228	0
1993	241	232	1
1994	225	234	0
1995	236	224	2
1996	194	201	1
1997	158	159	1
1998	208	200	2
1999	170	177	1
2000	189	176	1
2001	157	158	1
2002	155	160	1
2003	126	127	2
<b>Total</b>	<b>5,126</b>	<b>5,030</b>	<b>87</b>

In 2003, rules were received from the following 24 state agencies:

*Number of Proposed Rules, by Submitting Agency*

Department of Administration	2
Department of Agriculture, Trade and Consumer Protection	5
Department of Commerce	6
Department of Corrections	1
Department of Employee Trust Funds	1
Department of Financial Institutions	3
Department of Health and Family Services	12
Department of Natural Resources	32
Department of Public Instruction	5
Department of Regulation and Licensing	21
Department of Revenue	2
Department of Tourism	1
Department of Transportation	11
Department of Veterans Affairs	3
Department of Workforce Development	8
Educational Approval Board	1
Elections Board	1
Employment Relations Commission	1
Ethics Board	1
Insurance Commissioner	2
Kickapoo Reserve Management Board	1
Office of Commissioner of Insurance	2
Public Service Commission	3
Tax Appeals Commission	1
<b>Total</b>	<b>126</b>

Although the statistics presented in this report give some indication of the workload of the Legislative Council staff in reviewing proposed administrative rules, it should be noted that rules vary in length. Similarly, Clearinghouse reports vary from completion of a simple checklist to large reports. In summary, for all rule reports completed in 2003, the Legislative Council staff commented on:

1. The *statutory authority* of a proposed administrative rule on 29 occasions.
2. The *form, style and placement* of proposed administrative rules in the Wisconsin Administrative Code on 88 occasions.

3. A *conflict* with, or *duplication* of, existing rules on five occasions.
4. The *adequacy of references* of proposed administrative rules to related statutes, rules and forms on 36 occasions.
5. *Clarity, grammar, punctuation and use of plain language* in proposed administrative rules on 79 occasions.
6. The *potential conflicts* of proposed administrative rules with, and their comparability to, related federal regulations on three occasions. In addition, the Legislative Council staff has adopted a policy of noting when proposed rules are based on federal “*guidelines*,” which do not have the force of law, as opposed to rules based on federal “*regulations*,” which do have the force of law and with which the state may have a legal obligation to comply.
7. The *permit action deadline requirement* on no occasions.

**WORKING WITH AND ASSISTING COMMITTEES**

A Legislative Council staff attorney or analyst works with each standing committee, except Joint Finance. When a committee has a proposed rule referred to it by the presiding officer of the house, the staff member will participate in the committee’s oversight.

During 2003, legislative committees held hearings or requested meetings on **46 proposed rules**. Modifications to rules were either requested or received in the legislative review of **20 proposed rules**. **Two rules** were objected to by committees.

As a result of committee activities, **two rule objections** were subject to JCRAR jurisdiction in 2002. The JCRAR nonconcurred in part and objected in part to one rule and the committee concurred in the objection to a second rule.

The table below reviews legislative committee activity in the review of proposed administrative rules beginning on November 2, 1979 and ending on December 31, 2003.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2003)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
11/2/79-80	322	18	5	1	0	No bill introduced, rule withdrawn
1981	252	29	10	4	4	Chapters 20 (SEC. 1561), 26, 31 and 180, Laws of 1981
1982	251	31	4	1	1	1983 Wisconsin Act 94
1983	222	30	5	0	0	—
1984	255	26	2	2	2	1983 Wisconsin Act 310 and 1985 Wisconsin Act 29 (SEC. 826)
1985	213	37	8	3	2	♦ 1985 Wisconsin Act 29 (SECS. 1059r and 2238ng to 2238or) ♦ 1985 Assembly Bill 460, passed and vetoed; override failed

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2003)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
1986	251	30	1	0	0	—
1987	182	30	5	0	0	—
1988	219	38	4	0	0	—
1989	212	22	6	2	0	♦ 1989 Senate Bill 89 and 1989 Assembly Bill 171 (failed to pass) ♦ 1989 Senate Bill 248 and 1989 Assembly Bill 457 (failed to pass)
1990	264	29	2	1	0	♦ 1991 Senate Bill 24 and 1991 Assembly Bill 71 (failed to pass)
1991	199	19	5	1	0	♦ 1991 Senate Bill 442 and 1991 Assembly Bill 840 (failed to pass after rule objected to withdrawn by agency)
1992	225	33	3	2	1	♦ 1993 Wisconsin Act 9 ♦ 1993 Senate Bill 3 and 1993 Assembly Bill 17 (failed to pass)
1993	241	24	1	0	0	—
1994	225	29	3	0	0	—
1995	236	19	0	0	0	—
1996	194	19	1	1	1	Late introduction in 1995 Session: ♦ 1997 Assembly Bill 5 and 1997 Senate Bill 20 (failed to pass) ♦ 1997 Wisconsin Act 237 (SECS. 320s, 322d and 322e)
1997	158	19	6	0	0	—
1998	208	15	0	0	0	—
1999	170	18	2	1	0	—
2000	189	20	2	1	1	♦ 1999 Wisconsin Act 178
2001	157	14	5	2	0	♦ 2001 Assembly Bill 18 and Senate Bill 2 (failed to pass); ♦ 2001 Assembly Bill 524 and Senate Bill 267 (failed to pass) ♦ 2001 Assembly Bill 697 and Senate Bill 361 (failed to pass)
2002	155	35	2	1	0	♦ 2003 Assembly Bill 25 and Senate Bill 19 (pending).
2003	126	20	2	2	0	♦ 2003 Assembly Bill 253 and Senate Bill 123 (pending). ♦ 2003 Assembly Bill 535 and Senate Bill 259 (pending).
TOTAL	5,126	704	84	25	12 (PLUS ONE BILL PASSED AND VETOED; VETO NOT OVERRIDDEN)	

\* The general system of legislative review of proposed administrative rules, primarily embodied in ss. 227.15 and 227.19, Stats., took effect on November 2, 1979, as part of Ch. 34, Laws of 1979.

### **ELECTRONIC ACCESS**

In 2001, the Legislature, through its service agencies, began providing electronic access to all proposed administrative rules submitted to the Clearinghouse. The system mirrors the process already in place for legislative proposals. That is, interested persons are able to use the Internet to search for proposed rules directly or to link to them from the Legislature's Bulletin of Proceedings. The site holds the initial version of the proposed rule, the Clearinghouse report on the proposed rule, all modified versions of the proposed rule submitted to the Legislature, and the related agency report to the Legislature. Electronic access is available for proposed rules submitted to the Clearinghouse after the year 2000.

### **NOTICE OF CHANGE IN RULE-MAKING AUTHORITY**

To date, no court decisions or changes in legislation have been brought to the attention of the Legislative Council staff that would require notification of JCRAR or appropriate standing committees of a change in, or the elimination of, agency rule-making authority.

### **ASSISTING ADMINISTRATIVE AGENCIES**

The Legislative Council staff has responded to numerous questions from agency personnel, relating to both the process and the law governing legislative review of proposed rules.

### **PUBLIC LIAISON**

To date, the Legislative Council staff has received minimal requests from the public. These infrequent questions have either concerned aspects of the rule review procedure or have related to the status of specific rules.

RS:RNS;jal:tlu;rv;ksm

***APPENDIX 1***  
***SAMPLE CLEARINGHOUSE REPORT***





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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### 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 **03-006**

AN ORDER to create subchapter I (title) and subchapter II of chapter PI 7, relating to pupil transportation.

Submitted by **DEPARTMENT OF PUBLIC INSTRUCTION**

01-30-2003 RECEIVED BY LEGISLATIVE COUNCIL.

02-27-2003 REPORT SENT TO AGENCY.

RNS:JLK

**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



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 03-006

#### 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 October 2002.]**

#### **1. Statutory Authority**

a. The Department of Public Instruction (DPI) must determine the amount of compensation if there is disagreement about the amount of compensation regarding a proposed parental contract that falls under s. 121.55 (1) (b), Stats. However, if s. 121.55 (3), Stats., applies, a statutory formula determines the amount of compensation to a parent.

The statutes do not appear to specify a role for DPI if there is a disagreement about the calculations in the s. 121.55 (3) formula. While the State Superintendent must examine and determine all appeals which “by law” are made to the State Superintendent [s. 115.28 (5), Stats.], there does not appear to be a law providing for such an appeal to the State Superintendent in the case of a dispute about the calculations in the s. 121.55 (3) formula.

However, s. PI 7.06 (3) provides for an appeal to DPI by either party in a case involving s. 121.55 (3). Under what statutory authority is s. PI 7.06 (3) promulgated?

If DPI asserts that there is statutory authority to promulgate s. PI 7.06 (3), the rule should be modified to reflect that payment may not exceed actual cost, as specified in s. 121.55 (3), Stats. Also, how will DPI ascertain “actual cost” under that statute?

b. Section PI 7.04 (3) indicates that if a parent or guardian rejects a contract under s. PI 7.04 (that is, under s. 121.55 (1) (b), Stats.), the school board is still obligated to provide transportation for the pupil using one of the options under s. 121.55 (1) (a) or (c) to (e), Stats. Further, s. PI 7.06 (2) (intro.) provides that DPI will determine the amount of compensation for a contract under s. PI 7.04 upon a request of “both parties.” Therefore, under the proposed rule, a parent who does not agree with the proposed contract amount under s. 121.55 (1) (b) could insist on transportation being provided under s. 121.55 (1) (a) or (c) to (e), Stats., by the simple expedient

of refusing to agree to jointly request that DPI determine the compensation amount under s. PI 7.06 (2) (intro.).

This puts all of the bargaining chips on the side of the parent in a dispute under s. 121.55 (1) (b), Stats. This result seems contrary to the statutes. The statutes provide that if the school board and the parent or guardian cannot agree on the amount of compensation, DPI determines the amount of compensation in the contract. Thus, it appears that s. PI 7.04 (3) should be changed to read: “If the school board and the parent or guardian cannot agree on the amount of compensation, the department shall determine the amount of compensation under s. PI 7.06 (2).” Until that determination is made, the school board shall provide transportation for the pupil using one of the options under s. 121.55 (1) (a) or (c) to (e), Stats.

Moreover, it is not clear that there is statutory authority to require that “both” parties request a determination as provided in s. PI 7.06 (2) (intro.). The statutes provide that if the parties cannot agree, DPI makes the determination. Why is it not sufficient to have one of the parties (rather than both of the parties) make the request to DPI?

c. Section PI 7.05 (3) requires that a worksheet and estimate be maintained for three years following the school year in which the contract would apply. Section 19.21 (6), Stats., generally requires that a school board’s records be retained for at least seven years, unless the Public Records Board has established a shorter time period. Section 19.21 (6), Stats., provides that this retention requirement does not apply to “pupil records” under s. 118.125, Stats. Section 118.125 (3), Stats., generally provides that pupil records are maintained for the period specified by school board written rule.

It appears that the worksheet referred to in s. PI 7.05 (3), Stats., is not specific to a pupil and should be maintained for the period specified in s. 19.21 (6), Stats., unless the Public Records Board has established a shorter time. As it does not appear that the board has done so, it appears that there is no statutory authority for s. PI 7.05 (3) to specify a three-year retention period for this document.

The written record of the estimated cost to transport a specific pupil arguably is a pupil record, which would mean that the statutes provide that the school board is to establish the retention period pursuant to s. 118.125 (3), Stats. Therefore, it appears that there is no statutory authority for s. PI 7.05 (3) to specify a three-year retention period for this document.

## **2. Form, Style and Placement in Administrative Code**

- a. In s. PI 7.02 (1), “ss.” should be changed to “s.” because only one section is referred to.
- b. In s. PI 7.06 (1), “ss.” should be changed to “s.” and “subs.” should be changed to “sub.” because the conjunction in both cases is “or.”
- c. In the next-to-last paragraph of the appendix, “he/she” should be changed to “the pupil.” [See s. 1.01 (3), Manual.]

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

- a. The second paragraph of the analysis indicates that, with respect to s. 121.55 (1) (b), Stats., the “*rules* and present practice require . . . .” (Emphasis added.) It is not clear what existing rules are being referred to.

b. In s. PI 7.04 (3), reference is made to using one of the methods described under s. 121.55 (1) (a) or (c) to (e), Stats. If this provision is retained, should a reference to s. 121.555, Stats., be included?

c. The last sentence of s. PI 7.06 (3) refers to a nonexistent “s. 7.05 (3) (a).” First, “PI” should be inserted. Second, it appears that the reference should be to s. PI 7.05 (4) (a), rather than s. PI 7.05 (3) (a).

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

a. It appears that two of the major goals of the proposed rule should be to: (1) explain the relationship of s. 121.55 (1) (b), Stats., and s. 121.55 (3), Stats.; and (b) clarify when each applies. However, the rule does neither. Rather, it simply provides that under s. 121.55 (1) (b), Stats., certain things occur, and under s. 121.55 (3), Stats., other things occur.

Consideration could be given to making the following changes:

- 1) In s. PI 7.04 (2), specify that “Except as provided in s. PI 7.05, the amount of compensation provided in the contract shall be . . . .”
- 2) In s. PI 7.05 (1), specify that “If s. 121.55 (3), Stats., applies, a school board may fulfill its obligation . . . .” Section PI 7.05 could then be restructured to explicitly state at the beginning when s. 121.55 (3), Stats., applies and how the calculations are made. For example, the material in s. PI 7.05 (3) could be revised and inserted prior to the material in s. PI 7.05 (2), which simply explains the contract amount. The suggested revisions to current s. PI 7.05 (3) involve: (a) changing the introduction in the first sentence to state: “Prior to offering a contract under this section, the school board shall estimate . . . .”; and (b) changing the second sentence to state: “If the estimated cost of transporting the private school pupil is more than 1.5 times the school district’s average cost per pupil for bus transportation in the previous year, exclusive of transportation for kindergarten pupils during the noon hour and for pupils with disabilities, the school board may offer a contract under this section.”

b. It appears that the defined term “number of pupils transported” in s. PI 7.03 (2) is not used in the rule, other than in the appendix. A term should not be defined unless it is used.

Moreover, the asterisked definition of the term in the appendix is inconsistent with the definition in s. PI 7.03 (2). The definition in s. PI 7.03 (2) indicates that the number excludes “pupils with disabilities who received special transportation and kindergarten pupils transported only during the noon hour.” In contrast, the definition in the appendix does not exclude pupils with disabilities or kindergarten pupils transported only during the noon hour. Moreover, the definition in s. PI 7.03 (2) refers to pupils transported for the purpose of attending curricular programs or activities. In contrast, the definition in the appendix refers to pupils transported for the purpose of attending school during regular school hours. These inconsistencies lead to ambiguity.

c. The rule uses the term “school bus” and the term “bus.” (See, for example, ss. PI 7.03 (2) and 7.05.) It is unclear if the terms are intended to be synonymous. “School bus” is a defined term in s. 340.01 (56), Stats., but not all “buses” are school buses. The rule should be clarified.

Also, it may be useful to include a clear statement as to whether costs for transportation in vehicles described in s. 121.555, Stats., are to be included in the calculations of average cost and in the calculations of number of pupils transported.

d. The title to s. PI 7.04 refers in part to “contracts for transportation,” and the title to s. PI 7.05 refers in part to “contracts for the transportation.” Consideration could be given to making them parallel by adding “the” to s. PI 7.04 (title) or deleting “the” from s. PI 7.05 (title).

e. In some provisions, the rule refers to costs or the number of pupils transported in a “year.” (See, for example, ss. PI 7.05 (2) and (3) and 7.06 (3) and the first paragraph of the appendix.) In other provisions, the proposed rule refers to costs or the number of pupils transported in a “school year.” (See, for example, ss. PI 7.03 (2) and 7.05 (4) (a) and (b) and the last paragraph of the appendix.)

The two terms have different meanings. “School year” is defined in s. 115.001 (13), Stats., as beginning July 1 and ending June 30. In the general definitions section of the statutes, “year” is defined in s. 990.01 (49), Stats., as a calendar year. However, s. 990.01 (intro.), Stats., indicates that a word is to have the meaning specified in s. 990.01, Stats., unless the construction would produce a result inconsistent with the manifest intent of the Legislature. While s. 121.55 (3), Stats., refers to cost per pupil in the previous “year,” it is arguable that the intent was to refer to a school year, and it has apparently has been interpreted consistently as referring to a school year. If so, ambiguity in the rule would be lessened by consistently referring to “school year,” rather than “year.”

f. The rule is very confusing with respect to how pupils with disabilities are dealt with in calculating the average cost per pupil for bus transportation in the previous school year in the formula under s. 121.55 (3), Stats. Section 121.55 (3), Stats., twice refers to the “school district’s average cost per pupil for bus transportation in the previous year, exclusive of transportation for kindergarten pupils during the noon hour and for pupils with disabilities.” The confusion in the rule arises from the following inconsistencies:

- 1) The definition of “number of pupils transported” in s. PI 7.03 (2) indicates that the number excludes pupils with disabilities “who received special transportation.”
- 2) Section PI 7.05 (2) and (3) and the first paragraph of the appendix refer simply to excluding “pupils with disabilities,” apparently regardless of whether they receive special transportation.
- 3) The definition of “number of pupils transported” in the last paragraph of the appendix makes no mention of “pupils with disabilities,” much less pupils with disabilities who received special transportation.
- 4) The formula in the appendix makes no provision for subtracting out the expense of transporting pupils with disabilities, even though it provides for subtracting out the expense of transporting kindergarten pupils at the noon hour.

These inconsistencies should be eliminated.

g. In the notice provided under s. PI 7.05 (4), has consideration been given to including notice about the school board not being obligated to provide transportation if a properly offered contract is rejected?

h. Section PI 7.06 (1) indicates that if DPI is asked to determine the amount of compensation, the parties must accept DPI's determination. However, the next sentence indicates that DPI's final decision must specify any rights to a judicial review. If there are rights to a judicial review, the need for the sentence indicating that the parties must accept DPI's determination seems superfluous and creates confusion.

i. Section PI 7.06 indicates that if the school board and parent or guardian cannot agree on the amount of compensation, DPI determines the amount. This clearly applies for s. PI 7.04 disagreements. Has any consideration been given to specifying in the administrative code how the request to DPI for a determination is made, for example, by providing a form in an appendix or by, at a minimum, indicating in a note with which division or section in DPI the request is to be filed.

j. In s. PI 7.06 (2) (a), "as determined by the parent or guardian" should be set off by commas.

k. It would be useful if the worksheet in the appendix had a place to indicate the school year for which the calculations are being made (for example, 2002-03.)

l. In the next-to-last paragraph of the appendix, reference is made to multiplying \$5 times the distance between the pupil's home and the private school the pupil attends. If this is \$5 per mile, as indicated in s. PI 7.05 (2), reference to "miles" should be added in the appendix. Also, is this interpreted as miles along the usually traveled route or actual miles?



***APPENDIX 2***

***PROCESSING INSTRUCTIONS TO AGENCY HEADS***





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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### PROCESSING INSTRUCTIONS TO AGENCY HEADS

[ENCLOSED ARE THE SENATE AND ASSEMBLY RULE JACKETS CONTAINING THE LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT. AN ADDITIONAL COPY OF THE CLEARINGHOUSE REPORT IS ENCLOSED FOR YOUR FILES.]

**PLEASE NOTE:** Your agency must complete the following steps in the legislative process of administrative rule review:

1. On the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Report Received by Agency."
2. On the appropriate line or lines on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date or dates and, in column 2, "Public Hearing Held" OR "Public Hearing Not Required."
3. Enclose in both clearinghouse rule jackets, in triplicate, the notice and report required by s. 227.19 (2) and (3), Stats. [The report includes the rule in final draft form.]
4. Notify the presiding officer of the Senate and Assembly that the rule is in final draft form by hand delivering the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk. At the time of this submission, on the appropriate line on the face of the clearinghouse rule jacket, each Chief Clerk will enter, in column 1, the appropriate date and, in column 2, "Report Received from Agency." Each clearinghouse rule jacket will be promptly delivered to each presiding officer for referral of the notice and report to a standing committee in each house.
5. If the agency does not proceed with the rule-making process on this rule, on the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Rule Draft Withdrawn by Agency" and hand deliver the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk.

**FOR YOUR INFORMATION:** A record of all actions taken on administrative rules is contained in the Bulletin of Proceedings of the Wisconsin Legislature. The clearinghouse rule jackets will be retained by the Legislature as a permanent record.

[See reverse side for jacket sample.]

