



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 18-026

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

a. The proposed rule meets the standard that is required to submit a petition under s. 227.26 (4), Stats., for expedited repeal of an unauthorized rule. An “unauthorized rule” is a rule for which an agency lacks the authority to promulgate the rule due to the repeal or amendment of the law that previously authorized its promulgation. In this case, the board’s authority was amended by the creation of s. 440.035 (2), Stats., in 2017 Wisconsin Act 59.

b. Because the proposed rule relates to the **board’s** authority to conduct continuing education audits, the citation in the listing of statutes interpreted should be to 2017 Wisconsin Act 59, s. 1929, which created s. 440.035 (2), Stats. The board states that 2017 Wisconsin Act 59, s. 1904, which created s. 440.03 (4m), Stats., eliminated its authority to enforce the rules it proposes to repeal. However, that statute relates to the Department of Safety and Professional Services’ authority, rather than a board’s authority, to audit compliance with continuing education requirements.

c. The rule summary’s listing of statutory authority and the explanation of agency authority should not include citations to ss. 15.405 (2), 440.03 (4m), and 440.035 (1m), Stats. Those provisions do not confer rulemaking authority. The citations could, if desired, be included in the listing of statutes interpreted. [Note, that if the citations are moved to the listing of statutes interpreted, the citation to s. 440.03 (4m), Stats., should be corrected to s. 440.035 (2), Stats.]

2. Form, Style and Placement in Administrative Code

The board should add a relating clause to the proposed rule. [s. 1.02 (1) (a), Manual.]