WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-067

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

The department asserts that no public hearing is required because the proposed rule brings an existing rule into conformity with a statute that has been changed. However, the proposed rule appears to cite 2017 Wisconsin Act 108, an Act creating procedural statutes relating to agency review of existing administrative rules as the source of change in statute triggering the need for conformity. Other materials, such as the fiscal estimate, more clearly reference duplication with s. 121.55 (1) (b), Stats., as the source of the need for conformity, but do not reference any recent change to that statute.

Section 227.29 (1) (c), Stats., as created by 2017 Wisconsin Act 108, does not directly provide exemption from the hearing requirement of s. 227.16, Stats. Further, the plain language analysis of the proposed rule identifies certain provisions of the proposal as unrelated to 2017 Wisconsin Act 108 and technical in nature. It is unclear what would qualify such provisions from exemption from the public hearing requirement of s. 227.16, Stats. Accordingly, the department should either more clearly explain its reasoning for the determination that no hearing is required, or it should schedule the proposed rule for a public hearing prior to submitting the proposed rule for legislative review.

2. Form, Style and Placement in Administrative Code

a. The department should reorganize its enumeration of provisions treated as follows: repeal; repeal and recreate; and, create. [s. 1.02 (1) b), Manual.]

b. In the first paragraph of the plain language analysis, the department should replace "s." before "PI 7.04 (3) and 7.06 (1)" with "ss.".

c. In the second paragraph of the plain language analysis, the department should insert "Wisconsin" between "2017" and "Act 108". The same change should be made in the last sentence of the first paragraph under the summary of factual data and analytical methodologies.

d. In the second paragraph under the summary of factual data and analytical methodologies, the department should insert "Stats.," after "s. 227.29 (1) (d),".

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

An agency is required to provide an analysis of its proposed rule that includes a comparison with similar rules in Illinois, Iowa, Michigan, and Minnesota. [s. 227.14 (2) (a) 4., Stats.] The proposed rule seeks to modify ch. PI 7, which relates to pupil transportation. Therefore, the appropriate rules for comparison are those in the neighboring states that also address pupil transportation. The department should revise its proposed rule accordingly.

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

a. In the first paragraph of the plain language analysis, "parents" should be "parent".

b. In s. PI 7.04 (a) (intro.), why does the department include the phrase "upon the request of both parties"? This condition does not appear in s. 121.55 (1) (b), Stats., nor in proposed s. PI 7.05 (6), relating to contracts for transportation to private schools. Is a request by either a parent or a school board insufficient to trigger determination of compensation by the department? Why did the department choose one standard for public schools and another for private schools? How does the department intend to reconcile proposed s. PI 7.05 (6) with existing s. PI 7.05 (5)? Should s. PI 7.05 (5) be amended to apply after rejection of an amount of compensation determined by the department?