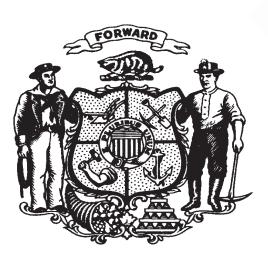
# Wisconsin Administrative Register

**No. 696** 





Publication Date: December 14, 2013 Effective Date: December 15, 2013



Legislative Reference Bureau http://www.legis.state.wi.us/rsb/code.htm

### **NOTICE TO SUBSCRIBERS**

### Printing of Administrative Code and Register Will End January 1, 2015

As required by 2013 Wisconsin Act 20, state–sponsored printing and distribution of the Wisconsin Administrative Code and Register will end January 1, 2015, and the Code and Register will become electronic–only publications.

#### **Important points:**

- The LRB will continue to publish the Code and Register at their present locations on the Legislature's and Legislative Reference Bureau's Internet sites.
- Publication of the Register will occur every Monday rather than the current practice of bimonthly publication.
- Updated and new Code chapters, with insertion and removal instructions, will still be published in the last Register of each month.

Code chapters will be published in the Register as PDF files in the exact format as they are currently printed, including page numbers.

Users can continue loose–leaf notebook use by printing chapters to 3–hole punch paper from any printer or by making arrangements with commercial printers. (Notebooks will no longer be available from the state and the notebook volume for insertion will no longer be designated for published chapters.)

- The format for Internet publication of the Code will not change. The Code will continue to be published in its entirety in both HTML and PDF formats and updated on the first day of each month to reflect changes published in the most recent end–of–month Register.
- An Email notice system is being developed to alert users to changes in only those rules and rulemaking notices that are of interest to the user. RSS feeds providing notice of new Registers and changes to the whole Code, Code chapters grouped by agency, and individual Code chapters are currently available. (For more information on RSS feeds see https://docs.legis.wisconsin.gov/feed.) Details on the email notice system will be published in future Registers prior to January 1, 2015.
- The cost of all subscriptions and renewals will be prorated to January 1, 2015 by DOA.

Direct questions on Internet publication to:

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### **Emergency Rules Now in Effect**

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at <u>www.legis.state.wi.us/rsb/code</u>.

Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.

#### **Administration** (2)

1. EmR1309 — The Department of Administration hereby adopts an order to create Chapter Adm 93, relating to the community development block grant program.

The statement of scope for this rule, SS 041–13, was approved by the Governor on April 15, 2013, and published in Register No. 688 on April 30, 2013, and approved by the Department of Administration Secretary, Mike Huebsch, effective May 13, 2013. This emergency rule was approved by the Governor on June 19, 2013.

#### Finding of Emergency

Each year the federal government makes funding available to the several states for economic and housing development through a program known as the Community Development Block Grant Program (CDBG). The CDBG is governed under 42 USC 5301 to 5319 and 24 CFR Part 570, and is administered by the US Department of Housing and Urban Development (HUD). Since the dissolution of the Wisconsin Department of Commerce, the Wisconsin Department of Administration (DOA) has received CDBG grants from HUD, and entered into agreements with the Wisconsin Economic Development Corporation (WEDC) for the administration of those funds. Under this arrangement, state administrative code Chapter Commerce 108 was unneeded, as WEDC operated under substantially similar internal policies. Recently, DOA and WEDC have mutually determined that the expertise of DOA is better suited to administration of CDBG funds, while the expertise of WEDC is best suited to consultation with localities and businesses seeking to access CDBG funds. The parties intend to formalize the transfer of administrative responsibility of CDBG funds to DOA shortly. Consequently, it is imperative for the welfare of the State of Wisconsin that administrative code provisions concerning the CDBG program be made.

Filed with LRB:	June 28, 2013
<b>Publication Date:</b>	July 1, 2013
Effective Dates:	July 1, 2013 through November 27, 2013
Hearing Date:	November 18, 2013
Extension Through:	January 26, 2014

2. EmR1321 — The Department of Administration hereby adopts an order to repeal section Adm 2.14 (2) (vr) c.; to renumber and amend section Adm 2.14 (2) (v)9. a. and b.; to amend sections Adm 2.02 (1) (a), 2.04 (1), 2.04 (2), (3), (5), and (7), 2.07 (2), 2.08 (1) and (1) (d), 2.11, 2.14 (2), (2) (v), (2) (vm) and (2) (vm) 5.; and to create sections Adm 2.03 (3m), (3r) and (6m), 2.04 (1m), (2m), (2r), (2z), (9), and (10), and 2.14 (2) (vm) and (2) (vm) 5.

The statement of scope for this rule, SS 131–13, was approved by the Governor on October 8, 2013, and published in Register No. 694 on October 31, 2013, and approved by Department of Administration Secretary Mike Huebsch on November 13, 2013. This emergency rule was approved by the Governor on November 21, 2013.

#### **Finding of Emergency**

Since 1979 the legislature has vested the department of administration with the responsibility and authority to manage various state buildings and grounds, including those of the Wisconsin state capitol. S. 16.84 (1), Stats. Since 1979, the department has permitted the use of these buildings and grounds for the free discussion of public questions and other purposes, so long as such uses did not interfere with the prime uses of these facilities, or otherwise infringe on interests of the state. s. 16.845, Stats., and s. Adm 2.04.

Each year, the Wisconsin state capitol police issue nearly 500 permits for the use of various state facilities. Permits are used for a variety of purposes, whether political, non-political, charitable, or commercial. Permits are issued regardless of political party, affiliation, or content. Permits are given to any person free of charge.

Occupation of the capitol rotunda and other areas has caused disruptions to the properly permitted events and normal government activities, including but not limited to, a Red Cross blood drive, a high school science exhibit, school group tours, general public tours, and legislative committee meetings and sessions. The state does not refuse permits for the lawful and safe use of state facilities by any person or persons, and the state cannot allow any person or persons to occupy the capitol in disregard of the rights of permit holders, public employees, or visitors. It is imperative that the department gain compliance in order to protect the public safety and welfare.

On October 24, 2013, a lawsuit was dismissed based upon a stipulation of and settlement agreement between the parties. The department is obligated under the settlement agreement to advance certain changes in procedure. The department seeks to fulfill its obligations in a timely manner, which is not possible without engaging in the emergency rule process.

Filed with LRB:	November 26, 2013
<b>Publication Date:</b>	November 27, 2013
Effective Dates:	November 27, 2013 through April 15, 2014

#### Agriculture, Trade and Consumer Protection (3)

1. EmR1311 — The state of Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule to amend section ATCP 21.17 (1) (b) and to create section ATCP 21.17 (1) (c), relating to the quarantine of Jefferson County for emerald ash borer.

This emergency rule was approved by the Governor on July 15, 2013.

The blanket statement of scope for this rule, SS 0088–12, was approved by the Governor on November 8, 2012, published in Register No. 683, on November 30, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection as required by s. 227.135 (2), Stats., on December 18, 2012.

#### **Finding of Emergency**

On June 25, 2013, the Wisconsin Department of Natural Resources positively identified Emerald Ash Borer (EAB) in Walworth County at the University of Wisconsin Whitewater Campus, about 750 meters from the Jefferson County line. EAB is an exotic, invasive pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare a quarantine for Jefferson County but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of these counties to areas of Wisconsin or other states that are not infested with EAB.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

Filed with LRB:	July 24, 2013
<b>Publication Date:</b>	July 24, 2013
Effective Dates:	July 24, 2013 through December 20, 2013
Hearing Date:	September 26, 2013

2. EmR1312 — The state of Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule to to amend section ATCP 21.17 (1) (b) and to create section ATCP 21.17 (1) (d), relating to the quarantine of Sauk County for emerald ash borer.

The blanket statement of scope for this rule, SS 08–12, was approved by the Governor on November 8, 2012, published

in Register No. 683, on November 30, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection (as required by s. 227.135 (2), Stats.) on December 18, 2012.

This emergency rule was approved by the Governor on August 1, 2013.

#### **Finding of Emergency**

On July 11, 2013, the United States Department of Agriculture — Animal and Plant Health Inspection Service ("APHIS") positively identified Emerald Ash Borer ("EAB") in Sauk County at Mirror Lake State Park. EAB is an exotic, invasive pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare a quarantine for Sauk County but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of these counties to areas of Wisconsin or other states that are not infested with EAB.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

Filed with LRB:	August 13, 2013
<b>Publication Date:</b>	August 14, 2013
Effective Dates:	August 14, 2013 through January 10, 2014
Hearing Date:	<b>September 26, 2013</b>

**3.** EmR1315 — The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend section ATCP 21.17 (1) (b) and to create section ATCP 21.17 (1) (e), relating to the quarantines of Dodge, Douglas, and Winnebago counties for emerald ash borer.

This emergency rule was approved by the Governor on August 29, 2013.

The blanket statement of scope for this rule, SS 0088–12, was approved by the Governor on November 8, 2012, published in Register No. 683, on November 30, 2012, and approved by the Board of Agriculture, Trade & Consumer Protection (as required by s. 227.135 (2), Stats.) on December 18, 2012.

#### **Finding of Emergency**

The United States Department of Agriculture - Animal and Plant Health Inspection Service ("APHIS") positively identified Emerald Ash Borer ("EAB") in Watertown, Dodge County on August 1, 2013; in Black Wolf township, Winnebago County on August 6, 2013; and subsequently in Superior, Douglas County on August 13, 2013. EAB is an exotic, invasive pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for EAB under s. ATCP 21.17. It is anticipated that APHIS will declare a quarantine for Dodge, Douglas, and Winnebago counties but that it will take six to eight weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially EAB infested material out of these counties to areas of Wisconsin or other states that are not infested with EAB.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

Filed with LRB: September 11, 2013

<b>Publication Date:</b>	September 11, 2013
Effective Dates:	September 11, 2013 through February 7, 2014
Hearing Date:	October 11, 2013

#### **Employment Relations Commission**

**EmR1310** — The Wisconsin Employment Relations Commission hereby creates **Chapters ERC 70, 71, and 80**, relating to annual certification elections.

This emergency rule was approved by the Governor July 3, 2013.

The statement of scope for this rule, SS 045–13, was approved by the Governor on April 19, 2013, published in Register 689, on May 14, 2013, and approved by the Wisconsin Employment Relations Commission on June 3, 2013.

#### **Finding of Emergency**

An emergency exists because the public peace, health, safety and welfare necessitate putting these rules into effect so that the Wisconsin Employment Relations Commission can meet its obligation to conduct annual certification elections as required by ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats.

Filed with LRB:	July 15 2013
Publication Date:	July 13, 2013
Effective Dates:	July 13, 2013 through December 9, 2013

#### **Insurance** (2)

**1. EmR1306** — The Commissioner of Insurance adopts an order to amend **sections Ins 17.01 (3) and 17.28 (3) (c)** and to repeal and recreate **section Ins 17.28 (6)**, Wis. Admin. Code, relating to Injured Patients and Families Compensation Fund Annual Fund and Mediation Panel Fees, and ISO code amendments for the fiscal year beginning July 1, 2013, and affecting small business.

This emergency rule was approved by the Governor on June 4, 2013.

The statement of scope for this rule, SS 042–13, was approved by the Governor on April 16, 2013, published in Register No. 688, on April 30, 2013, and approved by the Commissioner on May 10, 2013.

#### **Finding of Emergency**

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes must be in place with an effective date prior to July 1, 2013, in order for the new fiscal year assessments to be issued in accordance with s. 655.27 (3), Wis. Stats. The permanent rule–making process cannot be completed prior to the effective date of the new fee schedule. The fiscal year fund fees were established by the Board of Governors at the meeting held on December 19, 2012, and the mediation panel fees were established by the Board of Governors at the meeting held on March 20, 2013.

#### Filed with LRB: June 10, 2013

June 12, 2013
June 12, 2013 through
November 8, 2013
July 23, 2013
January 7, 2014

2. EmR1314 — The Commissioner of Insurance proposes an order to create Chapter Ins 6 subch. II, subch. II (title), and sections Ins 6.91 to 6.98, relating to navigators, nonnavigator assisters, and related entities and affecting small business.

The statement of scope for this rule SS 078–13, was approved by the Governor on July 1, 2013, published in Register No. 691, on July 15, 2013, and approved by the Commissioner on July 26, 2013. This emergency rule was approved by the Governor on August 30, 2013.

#### **Finding of Emergency**

In accordance with s. 623.98, Stats., the commissioner may promulgate rules under ss. 227.24 (1) (a) and (3), Stats., without providing evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare and without a finding of emergency. The commissioner intends to publish the proposed rule sufficiently in advance of October 1, 2013 to permit proper licensing, certification, and training of navigators and nonnavigator assisters and to permit proper registration of navigator and nonnavigator assister entities. The commissioner intends to promulgate permanent rules close in time to the emergency rules so not to create a gap in requirements.

Filed with LRB:	September 5, 2013
<b>Publication Date:</b>	September 10, 2013
Effective Dates:	September 10, 2013 through February 6, 2014
Hearing Date:	September 27, 2013

#### Natural Resources (5) Fish, Game, etc., Chs. NR 1—

1. EmR1210 (DNR # WM-09-12(E)) — The Wisconsin Natural Resources Board proposes an order to amend sections NR 10.001 (25c), 10.02 (1), 10.06 (5) and (8) (intro.), 10.07 (2) (b) 2., 10.07 (2m) (intro.) and (e) (intro.), 10.07 (2m) (f) (intro.), 10.09 (1), 10.13 (1) (b) 9., 10.13 (1) (b) 15., 10.13 (1) (b) 16., 10.145 (intro), 10.145 (3) to (8), 12.10 (intro.), 12.10 (1) (a) 4., 12.10 (1) (b) 2., 12.15 (13) and 19.25 and to create sections NR 10.001 (22q), 10.001 (23a), 10.001 (23am), 10.001 (23b), 10.001 (26g), 10.001 (33), 10.01 (3) (j), 10.07 (1) (m), 10.07 (2m) (em), 10.07 (2m) (g) 3., NR 10.07 (4), 10.13 (1) (b) 15m., 10.13 (1) (b) 18., 10.145 (1m), (1u) and Note, sections NR 10.16 (5), 10.295, 12.15 (11) (e), 12.60 to 12.63, 12.64 (1) (a) and (b) (intro.) 1., 12.64 (1) (b) 2. and 3., 12.64 (1) (b) 4. and 5., 12.64 (2) (a) to (c), 12.64 (2) (d), 12.64 (3) and 12.65, relating to the wolf hunting and trapping season and regulations and a depredation program.

This emergency rule was approved by the Governor on August 10, 2010.

The statement of scope for this rule, SS 023–12, was approved by the Governor on April 12, 2012, published in Register No. 676, on April 30, 2012, and approved by the Natural Resources Board on May 23, 2012.

#### **Finding of Emergency**

A non-statutory provision, SECTION 21, of 2011 ACT 169 requires the department to submit rules necessary for

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implementation or interpretation and establishes that the department is not required to make a finding of emergency.

ugust 15, 2012

Publication Date: August 18, 2012

Effective Dates: August 18, 2012 through the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.

**2.** EmR1215 (DNR # WM-16-12(E)) — The Wisconsin Natural Resources Board proposes an order to repeal and recreate section NR 10.01 (3) (h) 1., relating to the coyote hunting season.

This emergency rule was approved by the Governor on August 30, 2012.

The statement of scope for this rule, SS 038–12, was approved by the Governor on May 29, 2012, published in Register No. 678, on June 14, 2012, and approved by the Natural Resources Board on June 27, 2012.

#### **Finding of Emergency**

A non-statutory provision, Section 21, of 2011 ACT 169 requires the department to submit rules necessary for implementation or interpretation and establishes that the department is not required to make a finding of emergency.

Filed with LRB:	September 14, 2012
Publication Date:	October 1, 2012

Effective Dates: October 1, 2012 through the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.

**3.** EmR1313 (DNR # WMH-07-13(E)) — The Wisconsin Natural Resources Board proposes an order to repeal section NR 10.06 (9) (b); to amend section NR 10.01 (1) (v); to repeal and recreate sections NR 10.01 (1) (b) to (u) and 10.12 (3) (c); and to create section NR 10.12 (3) (e), relating to migratory bird hunting regulations.

This emergency rule was approved by the Governor on August 30, 2103.

The statement of scope for this rule, SS 018–13, was approved by the Governor on February 18, 2013, published in Register No. 687, on March 14, 2013, and approved by the Natural Resources Board on April 24, 2013.

#### **Statutory Authority**

The chapter on wild animals and plants, in s. 29.014, Stats., "rule making for this chapter", establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule–making authority allows the department to promulgate rules related to migratory game bird hunting. Additional statutory authority is found in ss. 23.11, 29.192 and 29.041, Stats. The emergency rule making process is established in s. 227.24, Stats.

Filed with LRB:	September 4, 2013
<b>Publication Date:</b>	September 6, 2013
Effective Dates:	September 6, 2013 through February 2, 2014
Hearing Date:	October 28, 2013

**4. EmR1319** (DNR # WM–22–13(E)) — The Wisconsin Natural Resources Board proposes an order to amend **sections** 

NR 10.275 (intro.) and 45.09 (1) and to create sections NR 10.13 (Note) and 10.275, relating to hunting and trapping in state parks.

This rule was approved by the Governor on October 31, 2013.

The statement of scope for this emergency rule, SS 083–13, was approved by the Governor on July 15, 2013, published in Register No. 691 on July 31, 2013 and approved by the Natural Resources Board on August 14, 2013.

#### **Finding of Emergency**

The department finds that putting this rule into effect prior to the time it would take effect using the permanent rule process is necessary to protect the public safety and welfare. By restricting gun and archery hunting to certain areas, and trapping to certain areas and methods, this rule will prevent those activities in locations where they may jeopardize the safety and welfare of visitors to the Wisconsin State Park System.

Filed with LRB:	November 7, 2013
<b>Publication Date:</b>	November 15, 2013
Effective Dates:	November 15, 2013 through April 13, 2014

**5. EmR1320** (DNR # FH–27–13(E)) — The Wisconsin Natural Resources Board proposes an order to create **Chapter NR 85**, relating to development of a competitive grant program for cities, villages, towns, counties, federally recognized Indian tribes or bands located in this state, and fish farms in order to increase the capacity to raise walleye for stocking in Wisconsin waters.

This rule was approved by the Governor on November 8, 2013.

The statement of scope for this emergency rule, SS 104–13, was approved by the Governor on August 12, 2013, published in Register No. 692 on September 1, 2013 (August 31, 2013), and approved by the Natural Resources Board on September 25, 2013.

#### Finding of Emergency — Exemption

2013 Wisconsin Act 20, the 2013-15 state budget, included the following nonstatutory language: The department of natural resources may promulgate emergency rules under section 227.24 of the statutes implementing sections 29.739 and 29.740 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated for walleye population maintenance and enhancement grants remain in effect until June 30, 2016, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating this rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

Filed with LRB:	November 14, 2013
<b>Publication Date:</b>	November 21, 2013
Effective Dates: June 30, 2016, or the date or effect, whichever is sooner.	November 21, 2013 through which permanent rules take
Hearing Date:	December 12, 2013 and December 19, 2013

#### Safety and Professional Services (2) Professional Services, Chs. SPS 1—299

1. EmR1307 — The Wisconsin Department of Safety and Professional Services adopts an order to repeal section SPS 81.04 (1) (c) 3. and 4., and to amend section SPS 81.04 (2), relating to reciprocity.

This emergency rule was approved by the Governor on May 20, 2013.

The statement of scope for this rule, SS 012–13, was approved by the Governor on January 28, 2013, published in Register No. 686 on February 14, 2013, and approved by the Department of Safety and Professional Services on February 28, 2013.

#### **Finding of Emergency**

The Department of Safety and Professional Services finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is as follows:

Title XI of the Federal Financial Institutions Reform and Recovery Enforcement Act of 1989, as amended by the Dodd-Frank Act of 2010, dictates reciprocity requirements for real estate appraisers in each state. The federal body that oversees reciprocity requirements is the Appraisal Subcommittee (ASC). Currently, Wis. Admin. Code s. SPS 81.04 is not in compliance with the federal legislation. The Code must be brought into compliance by July 1, 2013. At that time, the ASC will conduct an audit to determine which states are in compliance. If Wisconsin is designated "out of compliance," then federally regulated financial institutions may not engage a Wisconsin certified or licensed appraiser to perform an appraisal of property for a federally related transaction and other states will not be required to recognize Wisconsin credentialed appraisers seeking reciprocity. In order to implement the federally mandated reciprocity requirements before July 1, 2013, an emergency rule is needed.

Filed with LRB:	June 12, 2013
<b>Publication Date:</b>	June 18, 2013
<b>Effective Dates:</b>	June 18, 2013 through
	November 14, 2013
<b>Extension Through:</b>	January 13, 2014

2. EmR1308 — The Wisconsin Department of Safety and Professional Services adopts an order to create section SPS 34.04 (2) (a) 4., relating to training of firearms instructors for private security personnel, private detectives, and private investigators or special investigators, and affecting small business.

This emergency rule was approved by the Governor on May 29, 2013.

The statement of scope for this rule, SS 080–12, was approved by the Governor on October 2, 2012, published in Register No. 682 on October 31, 2012, and approved by the Department of Safety and Professional Services on December 4, 2012.

#### **Finding of Emergency**

The Department of Safety and Professional Services (DSPS) finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is as follows.

Under section SPS 34.02 (1), private security personnel, private detectives, and private investigators or special investigators, who are seeking a firearms permit from the Department must obtain a certificate of firearms proficiency. Section SPS 34.02 (2) mandates that the certification be received from a Department–approved firearms–proficiency certifier pursuant to section SPS 34.04.

Section SPS 34.04 currently accepts only those certifier applicants who have received training as a police or security firearms instructor and who have either (1) current approval as a firearms instructor by the Wisconsin Law Enforcement Standards Board (LESB); (2) current certification as a law enforcement firearms instructor by the National Rifle Association, Inc., (NRA) or; (3) approval on or after January 1, 1995, as a firearms instructor by the LESB or NRA and have completed a refresher course presented by a regional training school approved by the LESB or the NRA.

Due to enactment of 2011 Wisconsin Act 35 (commonly referred to as the concealed carry law), which became effective on November 1, 2011, there is a greater need for additional entities who can provide training and approve applicants as firearms proficiency certifiers. Section 175.60 (4) of the Statutes currently allows technical colleges, colleges, and universities to provide this training for concealed-carry purposes. No such provision is made as it relates to private security personnel, private detectives, and private investigators or special investigators, for carrying a weapon openly. Moreover, the training needed for DSPS firearms certifiers differs significantly from that needed and provided by the LESB curriculum and under 2011 Act 35. To that end, a new standard needs to be developed and implemented, separate and distinct from the LESB standards. Because the need to approve applicants for firearm proficiency certifiers is immediate and pressing, emergency rules are warranted.

Filed with LRB:	June 13, 2013
<b>Publication Date:</b>	June 13, 2013
<b>Effective Dates:</b>	June 13, 2013 through
	November 9, 2013
Hearing Date:	August 6, 2013
Extension Through:	January 8, 2014

#### Safety and Professional Services — Controlled Substances Board

**EmR1318** — The Controlled Substances Board adopts an order to create **section CSB 2.36**, relating to scheduling controlled substances.

This emergency rule was approved by the Governor on September 20, 2013.

The statement of scope for this rule, SS 062–13, was approved by the Governor on May 29, 2013, published in Register 690 on June 15, 2013, and approved by the Controlled Substances Board on July 15, 2013.

#### **Finding of Emergency**

The Controlled Substances Board finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The Brown County District Attorney's office has provided the Controlled Substances Board with information relevant to emergency scheduling and the commencement of a prosecution concerning a controlled substance analog. UR-144, XLR-11, and AKB48 are pharmacologically similar to Schedule I substances THC and JWH–018. By sharing pharmacological similarities with the Schedule I substances, synthetic cannabinoids pose a risk both to the individual user and other affected individuals. UR–144, XLR–11, and AKB48 are being marketed as "legal" alternatives to marijuana. This characterization (and the reputation as potent herbal intoxicants) has increased their popularity and prevalence.

The Controlled Substances Board finds that scheduling of UR-144, XLR-11, and AKB48 on an emergency basis is necessary to avoid an imminent hazard to public safety. The substances are not included in any other schedule and no exemption or approval is in effect for the substance under 21 USC 355.

On May 16, 2013, the U.S. Department of Justice Drug Enforcement Administration emergency scheduled UR–144, XLR11, and AKB48 as Schedule I, illegal drugs under the Controlled Substances Act.

Filed with LRB:	October 17, 2013
<b>Publication Date:</b>	October 13, 2013
Effective Dates:	October 13, 2013 through October 12, 2014
Hearing Date:	November 11, 2013

#### Workforce Development Unemployment Insurance, Chs. DWD 100–150

**EmR1316** — The Wisconsin Department of Workforce Development hereby adopts an order to repeal sections DWD 126.02 (2), (3), and (4), 126.03 (1), 126.04, 126.05, 127.01 (2) (b), (f) to (i), and (3), 127.02 (intro.), (1), (2), (3), and (4), 127.02 (5) and (10), and 127.08; to renumber and amend section DWD 126.02 (1); to amend sections DWD 126.01, 126.03 (intro.) and (2), 127 (title), 127.01 (1), (2) (intro.), (a), (c), and (d), 127.02 (7), (9), and (11), 127.04 (title), (1), and (2), 127.05, 127.06 (1), (2), and (3), 127.07 (title) and (1), 128.01 (2) (a), and 129.01 (1) and (2); to repeal and recreate sections DWD 126.02 (Note), 126.03 (3), (4), (5), (6), and (7), 127.01 (2) (em), 127.02 (12), 127.04 (1m) (e), and 127.06 (1) (c), relating to unemployment insurance work registration, work search, and benefit claiming procedures.

This emergency rule was approved by the Governor on September 20, 2013.

The statement of scope for this emergency rule, SS 106–13, was approved by the Governor on August 14, 2013, published in Register No. 692 on August 31, 2013, and approved by the Secretary of Workforce Development on September 11, 2013.

#### **Finding of Emergency**

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public welfare. Statements of the facts constituting the emergency are:

- (1) In order to fulfill the new statutory directives to require claimants for unemployment insurance benefits to increase their number of weekly work search actions from two to at least four;
- (2) In order to simplify the process and compliance with respect to requirements for unemployment insurance claimants to register for work;

- (3) In order to execute the new statutory requirement to request additional information from claimants;
- (4) In order to improve the unemployment insurance trust fund balance and thereby relieve employers of the burden of additional taxation;
- (5) In order to better assist unemployment insurance benefit claimants to obtain gainful employment; and,
- (6) In order to promote the improvement in the Wisconsin economy as a result of the immediate implementation of legislative directives with respect to the unemployment insurance program contained in 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36.

Adoption of the emergency rule will ensure that these legislative directives are implemented within the time–frame envisioned with enactment of 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36.

Filed with LRB:	September 25, 2013
Publication Date:	September 29, 2013

Effective Dates: September 29, 2013 through February 25, 2014, except that changes to ss. DWD 126.03 and 127.02 take effect after the Secretary determines the Department has the technological ability to implement the changes.

Hearing Date: November 4, 2013

#### Workforce Development

Employment and Training, Chs. DWD 805–830

**EmR1317** — The Wisconsin Department of Workforce Development hereby adopts an order to create **Chapter DWD 801**, relating to workforce training grants under the Wisconsin Fast Forward program.

This emergency rule was approved by the Governor on September 20, 2013.

The statement of scope for this rule, SS 109–13, was approved by the Governor on August 15, 2013, published in Register No. 692 on August 31, 2013, and approved by the Department of Workforce Development on September 11, 2013.

#### **Finding of Emergency**

The Department of Workforce Development (DWD) finds that an emergency exists and emergency rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. The reason for the emergency is:

DWD proposes to create new rules in Chapter DWD 801 to implement the program of workforce training grants enacted by 2013 Wisconsin Act 9. DWD held a public hearing on the permanent rule for this new program on July 15, 2013, and has made revisions to the text of the proposed permanent rule in response to the comments received. It would now benefit the public welfare to proceed with the rules in emergency form so that the program can begin this fall.

Filed with LRB:	<b>September 25, 2013</b>
<b>Publication Date:</b>	September 29, 2013
Effective Dates:	October 1, 2013 through February 27, 2014
Hearing Date:	November 5, 2013

### **Scope Statements**

#### Insurance

#### SS 154–13

This statement of scope was approved by the Governor on November 21, 2013.

#### Rule No.

Section Ins 17.50, Wis. Admin. Code (revise).

#### **Relating to**

Self-insured plans covering health care providers subject to Wis. Stat. Chapter 655 and affecting small business.

#### **Rule Type**

Permanent.

### 1. Finding/Nature of Emergency N/A

#### 2. Detailed Description of the Objective of the Rule

To update existing financial requirements for self-insured plans for health care providers which have not been revised since creation in 1989. The proposed rule will incorporate the new statutorily created self-insurance plan, define "affiliated health care providers," and any other undefined terms. Additionally, the proposed rule will create filing, financial solvency, and regulatory oversight requirements for self-insurance plans providing coverage for all affiliated health care providers under a controlling legal entity.

#### **3.** Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background, and Justification for the Proposed Rule

The Wisconsin injured patients and families compensation fund ("fund"), permits health care providers subject to Wis. Stat. s. 655.23 (3), to either "insure and keep insured the health care provider's liability by a policy of health care liability insurance issued by an insurer authorized to do business in this state or qualify as a self-insurer." Section Ins 17.50, Wis. Admin. Code, implements this section and establishes requirements to qualify as a self-insurer. Following passage of the new definition of self-insurance plan in 2013 Wis. Act 20, the existing rule must be expanded to include a self-insurance plan that self-insures health care providers subject to Wis. Stat. Ch. 655 against medical malpractice claims, including affiliated health care providers. In the Governor's veto message, the commissioner was directed to promulgate rules defining affiliated health care providers consistent with of the motion introducing the definition of self-insurance plan.

### **4.** Detailed Statutory Authority for the rule (Including the Statutory Citation and Language)

The fund was established by and is operated as provided in Wis. Stat. Ch. 655. Wisconsin statute s. 655.004 permits the commissioner, director of state courts, and department of health services to promulgate rules as are necessary to enable them to perform their responsibilities under Wis. Stat. Ch. 655. Pursuant to Wis. Stat. s. 655.23 (3) (a), the commissioner may establish conditions for qualification as a self–insurer. Finally, Wis. Stat. s. 601.41 (3), provides that the Commissioner shall have rule–making authority under Wis. Stat. s. 227.11 (2).

#### 5. Estimates of the Amount of Time that state Employees will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule

200 hours of time including the time of state employees and members of the fund board of governors.

### 6. List with description of all entities that may be impacted by the rule

All health care providers that are participants in the fund as set forth in Wis. Stat. s. 655.002 (1) are able to exercise the option be fully insured by an authorized and licensed insurer or self–insure. The rule will affect only those health care providers that choose to self–insure.

#### 7. Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule

There is no existing or proposed federal regulation addressing any medical malpractice fund like the Wisconsin fund.

# 8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

significant economic impact on small businesses?

\_\_\_\_ yes

<u>X</u> no

local/statewide economic impact (choose one)

<u>X</u> minimal or none (< or = \$50,000)

- \_\_\_\_ moderate (\$50,000––\$20,000,000)
- significant (>\$20,000,000)

#### **Contact Person**

Julie E. Walsh, Senior Attorney, (608) 264-8101.

#### **Natural Resources**

Fish, Game, etc., Chs. 1—

SS 153–13

(DNR # FH-34-13)

This statement of scope was approved by the Governor on November 21, 2013.

#### Rule No.

Chapters NR 20 to 23 (revise).

#### **Relating to**

Fishing regulations related to trolling on inland waters of Wisconsin.

#### **Rule Type**

Permanent.

### **1.** Finding/Nature of Emergency (Emergency Rule Only)

The rule will be proposed as a permanent rule.

### 2. Detailed Description of the Objective of the Proposed Rule

This rule is being pursued in order to allow some form of trolling on all inland waters in Wisconsin, which would simplify current regulations and reduce confusion between trolling and position fishing.

Trolling means fishing by trailing any lure, bait, or similar device that may be used to attract or catch fish from a boat propelled by a means other than drifting or rowing. Drifting or "row trolling" is allowed in all waters statewide. Position fishing means fishing from a boat in a manner where the fishing line extends vertically into the water while the boat is maneuvered by the use of a motor. Position fishing could be a musky angler fishing with a sucker as bait while maneuvering the boat, but the fishing line would have to remain vertical. If it is trailed out behind the boat or fished under a bobber, then a significant part of the fishing line is no longer vertical in the water and the person is then motor trolling, which is prohibited on many waters. Many anglers want the option to trail a fishing line behind their boat while maneuvering the boat and not need to worry whether the line is staying completely vertical in the water. Allowing trolling in all inland waters may remove the need to define position fishing and allow anglers to trail bait behind their boats as well as do other forms of trolling, such as using planar boards that extend fishing lines far from the boat while motoring through the water.

Additional rule changes may be pursued which are reasonably related to those discussed in this scope statement.

# **3.** Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Trolling is currently allowed for certain disabled anglers by special permit and on all waters in 18 counties; on one or more waters in 45 counties (105 total waters); and on all boundary waters with IA, MN, and MI, except in Vilas County boundary waters with MI. Motor trolling is also allowed in all surrounding states and provinces, with no known adverse biological effects.

- In a 1993 study, the Department compared catch rates and sizes of fish caught from creel surveys conducted from 1980–90 and found no significant differences for walleyes, northern pike, or muskellunge. The same study also found that these species were no more vulnerable to trolling than still fishing in small lakes (<500 acres) versus larger lakes.
- More recently, the Department compared catch and harvest statistics for muskellunge in 189 creel surveys conducted from 1998–2011 and found no significant differences in lakes where trolling was allowed and where it was prohibited. The Department has analyzed available biological information and found no evidence of biological impacts caused by trolling.
- While transient boating in general has been shown to be associated with the spread of aquatic invasive

species, there is no evidence that Eurasian Water Milfoil is more common in lakes currently open to trolling versus those closed to trolling.

• Trolling is currently allowed on lakes of all sizes without significant user conflicts. A 2010–11 statewide mail survey of musky anglers found that conflicts with speed boats, jet skis, and other non–angling users, was the 4<sup>th</sup> highest ranking problem in musky fishing, compared to conflicts with other anglers which ranked only 16<sup>th</sup> out of 18 identified problems.

Allowing trolling statewide would:

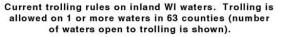
1) simplify regulations by eliminating confusion about where trolling is or is not allowed;

2) allow moving boats to trail behind suckers or other minnows while occupants are casting on all waters;

3) eliminate the need for disabled anglers to have to apply for trolling permits; and

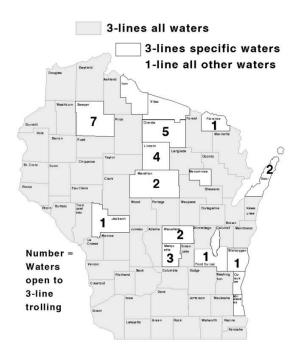
4) provide additional fishing opportunities for anglers who may have difficulty fishing by other methods.

Current map of trolling regulations:





A 2013 rule (FH–18–12) proposed by the Department originally included a trolling proposal that would have allowed trolling on all inland waters statewide with up to three hooks, baits, or lures per angler. After public hearings in each county and discussions with Wisconsin Conservation Congress delegates, the rule was modified to allow trolling on all inland waters statewide with one hook, bait, or lure per angler. In addition, trolling would have been allowed with up to three hooks, baits, or lures in most counties of the State and some individual waters. However, after submitting the rule to the Governor's Office of Regulatory Compliance, it requested that the department remove all trolling elements from the rule and obtain additional public input on a trolling proposal. Proposal removed from previous rule:



This rule process will present the combined one– and three–hooks, baits, or lures per angler trolling option, as well as discuss alternative options that would help further simplify the trolling regulations.

### **4.** Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Section 29.014(1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

#### **5.** Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

Approximately 250 hours

### 6. List with Description of all Entities that may be Affected by the Proposed Rule

The proposed rule will primarily affect sport anglers. As with any change in regulations, there will be a requirement for anglers to learn the new rules. The Fisheries Management Bureau works to notify the public of new regulations via press releases, the internet, and fishing regulations pamphlets.

#### 7. Summary and Preliminary Comparison with any Existing or Proposed Federal Regulation That is Intended to Address the Activities to be Regulated by the Proposed Rule

Authority to promulgate fishing regulations is granted to states. No changes would violate or conflict with federal regulations.

#### 8. Anticipated Economic Impact of Implementing the Rule (Note if The Rule is Likely to Have a Significant Economic Impact on Small Businesses)

Minimal to no economic impact. (Level 3)

It is not expected that there will be any economic impact directly related to these rule changes. The proposed rule will primarily affect sport anglers. Regulations are already in place and this rule is intended to continue protection and enhancement of the State's fish resources.

The Department will conduct an economic impact analysis to determine if any individuals, businesses, local governments, or other entities expect to be adversely affected economically. The proposed rule would not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule.

### 9. Anticipated Number, Month and Locations of Public Hearings

The Department anticipates utilizing the Fish and Wildlife Spring Hearings held in each county of the State in April 2014 to officially gather public input on the rule.

#### **Contact Person**

Kate Strom Hiorns, 608-266-0828.

#### Safety and Professional Services — Medical Examining Board

SS 151-13

This statement of scope was approved by the Governor on November 15, 2013.

#### Rule No.

Section Med 13.06 (revise).

#### **Relating to**

Continuing education audits.

#### **Rule Type**

Permanent.

### 1. Finding/Nature of Emergency (Emergency Rule Only)

N/A

### **2.** Detailed Description of the Objective of the Proposed Rule

The objective of this proposed rule is to empower the Medical Examining Board (Board) with the ability to conduct continuing education audits of its licensees every two years.

# **3.** Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Currently, the Medical Examining Board may conduct an audit of continuing education at any time. However, there is no requirement as to when an audit must take place. The proposed rule would insure that an audit of continuing education credits would be conducted every two years. The audit would verify whether licensees had completed the 30 hours of required continuing education during the 2 calendar years preceding the calendar year for which application for registration was made. The proposed rule may include other amendments as necessary based on changes to s. Med 13.06.

### **4.** Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Section 227.11 (2), Stats., discusses the parameters of an agency's rule-making authority stating an agency, "may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation." Section 227.01 (1), Stats., defines agency as a board. The Medical Examining Board falls within this definition. Therefore, the Board may promulgate administrative rules which interpret the statutes it enforces or administers as long as the proposed rule does not exceed proper interpretation of the statute.

Section 448.13 (1m), Stats provides that, "[t]he board shall, on a random basis, verify the accuracy of proof submitted by physicians under sub. (1) (a) and may, at any time during the 2 calendar years specified in sub. (1) (a), require a physician to submit proof of any continuing education, professional development, and maintenance of certification or performance improvement or continuing medical education programs or course of study that he or she has attended and completed at that time during the 2 calendar years." This statute dictates that the accuracy of evidence of continuing education must be verified. Therefore, the Board is authorized to promulgate rules that will carry out the purpose of this statute.

#### **5.** Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

State employees will spend approximately 50 hours developing the proposed rule.

### 6. List with Description of all Entities that may be Affected by the Proposed Rule

Wisconsin licensed physicians will be affected by this proposed rule.

#### 7. Summary and Preliminary Comparison with any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule

There are no comparable existing or proposed federal regulations dealing with this issue.

#### 8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

This rule is not likely to have a significant economic impact on small businesses.

#### **Contact Person**

Shawn Leatherwood 608-261-4438.

#### Safety and Professional Services — Podiatry Affiliated Credentialing Board

#### SS 152–13

This statement of scope was approved by the Governor on November 15, 2013.

#### Rule No.

Section Pod 3.04 (revise).

#### Relating to

Continuing education audits.

#### **Rule Type**

Permanent.

### **1.** Finding/Nature of Emergency (Emergency Rule Only)

N/A

### **2.** Detailed description of the Objective of the proposed rule

The objective of this proposed rule is to empower the Podiatry Affiliated Credentialing Board (Board) with the ability to conduct continuing education (CE) audits of its licensees on a biennial basis.

# **3.** Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Pursuant to s. Pod 3.04, the Board may require a podiatrist, "to submit evidence to the board of his or her compliance with continuing education requirements during the preceding biennium". However, the administrative rules do not identify when an audit should take place or how long a podiatrist should maintain evidence of compliance. The proposed rule seeks to address these two issues by specifying the time period for continuing education audits and by specifying the time period for maintaining documentary evidence of CE compliance.

Wis. Stats. s. 448.665, states that, "the rules shall require a licensee to complete at least 30 hours of continuing education programs or courses of study within each 2–year period immediately preceding the renewal date specified in s. 440.08 (2) (a)". That renewal date is November 1<sup>st</sup> of each even numbered year. The proposed rule would change the language in s. Pod 3.01 to reflect the statutory language. Lastly, s. Pod 3.04 would be amended to require licensees to maintain evidence of CE compliance on a biennial basis.

### **4.** Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Section 227.11 (2), Stats., discusses the parameters of an agency's rule-making authority stating an agency, "may promulgate rules interpreting the provisions of nay statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of any statute, but a rule is not valid if it exceeds the bounds of correct interpretation." Section 227.01 (1), Stats., defines agency as a board. The Podiatry Affiliated Credentialing Board falls within that definition. Therefore, the Board may promulgate administrative rules which interpret the statutes it enforces or administers as long as the proposed rule does not exceed proper interpretation of the statute.

Section 448.665, Stats., provides that, "[t]he affiliated credentialing board shall promulgate rules establishing requirements and procedures for licensees to complete continuing education programs or courses of study in order to qualify for renewal of a license granted under this subchapter." This provision empowers the Board to promulgate rules setting forth the process of conducting credential renewal after meeting continuing education requirements.

#### **5.** Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

State employees will spend approximately 50 hours developing the proposed rule.

### 6. List with Description of all Entities that may be Affected by the Proposed Rule

Wisconsin licensed podiatrist will be affected by this proposed rule.

### 7. Summary and Preliminary Comparison with any Existing or Proposed Federal Regulation that is

### Intended to Address the Activities to be Regulated by the Proposed Rule

There is no comparable existing or proposed federal regulations dealing with this issue.

# 8. Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

This rule is not likely to have a significant economic impact on small businesses.

#### **Contact Person**

Shawn Leatherwood 608–261–4438.

### Submittal of Proposed Rules to Legislative Council Clearinghouse

Please check the Bulletin of Proceedings — Administrative Rules for further information on a particular rule.

#### Safety and Professional Services — Real Estate Examining Board CR 13–100

On November 26, 2013, the Real Estate Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

The scope statement for this rule, SS 089–13, was approved by the Governor on July 7, 2013, published in Register No. 692 on August 15, 2013, and approved by Real Estate Examining Board on July 18, 2013.

#### Analysis

Statutory Authority: Sections 15.08 (5) (b), 227.11 (2),

452.07 (1m), and 452.12 (6) (a), Stats.

This proposed rule–making order is to repeal Chapters REEB 22 and 26 and amend sections REEB 11.01 (intro.), 11.02 (intro.), 12.04 (1) (intro.) and (2) (intro.), and 25.065 (1) and (Note), relating to apprentices and inactive licenses.

#### **Agency Procedure for Promulgation**

A public hearing is required and will be held on February 20, 2014, at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

#### **Contact Person**

Jean MacCubbin, Department of Safety and Professional Services, Division of Policy Development, phone 608.266.0955; email <u>jean.maccubbin@wisconsin.gov</u>.

### **Rule–Making Notices**

#### **Notice of Hearing**

#### Employment Relations Commission CR 13–092 EmR1310

#### (Rescheduled hearing)

NOTICE IS HEREBY GIVEN that the Wisconsin Employment Relations Commission will hold a public hearing regarding promulgated emergency rules and the proposed creation of permanent rules to create Chapters ERC 70, 71, and 80, relating to annual union certification elections.

#### **Hearing Information**

Date:	Tuesday, January 7, 2014
Time:	10:00 a.m.
Location:	4868 High Crossing Blvd.
	Madison, WI

### Appearance at Hearing and Submission of Written Comments

The hearing site is accessible to people with disabilities. However, if you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact Peter Davis at 608 243–2421 or peterg.davis@wisconsin.gov.

Comments on the proposed rule should be submitted by **November 22, 2013**, and can be faxed to (608) 243–2433, emailed to <u>peterg.davis@wisconsin.gov</u>, or mailed/hand-delivered to 4868 High Crossing Blvd., Madison, Wisconsin 53704–7403.

#### Analysis Prepared by the Commission

#### Statutes interpreted

The promulgated emergency rules and proposed permanent administrative rules interpret ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats.

#### Statutory authority

Sections 111.71, 111.94, 227.11, and 227.24, Stats.

#### Explanation of agency authority

The Municipal Employment Relations Act and the State Employment Labor Relations Act both require that the Commission adopt administrative rules to regulate various proceedings. In addition, ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats., require that the Commission assess a fee for each annual certification election and the fee level must be established by administrative rule.

#### Related statute or rule

None.

#### Rule summary

By these promulgated emergency rules and proposed rules, the Wisconsin Employment Relations Commission created and proposes to permanently create chs. ERC 70, 71, and 80 concerning the cost, timing, and procedures for any requested annual certification elections required by 2011 Wisconsin Act 10 and 2011 Wisconsin Act 32 to determine whether a bargaining unit of general (i.e., non-public safety and non-transit) employees in the municipal or state sector that is represented by a labor organization for collective bargaining with the employer involved shall continue to be represented by that organization or by another organization or shall not be so represented.

These rules do not require the retroactive conduct of elections that would have been conducted on or before December 1, 2012, and May 1, 2013, but for a March 2012 federal court order enjoining such elections under the State Employment Labor Relations Act and the Commission's related March 2012 determination to suspend the conduct of such elections under the Municipal Employment Relations Act until the federal court litigation was concluded.

These rules are not applicable to the plaintiffs in Case 11CV3744 unless and until the Circuit Court's decision is no longer in effect.

Under these rules, a labor organization continues to represent employees (and thus is eligible to file a certification election petition under these rules) unless that organization lost an initial annual certification election conducted by the Commission or was required to but failed to file a petition for an annual certification election prior to March 2012.

2011 Wisconsin Act 32 requires that the Commission charge a fee for conducting any requested election. These rules require that the labor organization or organizations requesting the election should pay the fee and that the following fee structure applies.

\$200: 1 to 100 eligible voters

\$350: 101 to 250 eligible voters

\$500: 251 to 500 eligible voters

\$750: 501 to 1000 eligible voters

\$1500: 1001 to 3000 eligible voters

\$2000: over 3000 eligible voters

Under these rules, the timing of requested elections is as follows:

- No later than December 1 for units of all general state employees who, as of August 30, are not covered by a collective bargaining agreement or are covered by a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 80). Unions wishing to continue as the collective bargaining representative must file an election petition and applicable fee on or before August 30;
- No later than December 1 for units of general municipal school district employees who, as of August 30, are not covered by a collective bargaining agreement or are covered by a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 70). Unions wishing to continue as the collective bargaining representative must file an election petition and applicable fee on or before August 30;
- No later than May 1 for units of general municipal employees who, as of January 30, are not covered by a collective bargaining agreement or are covered by a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 71). Unions wishing to continue as the collective bargaining

representative must file an election petition and applicable fee on or before January 30.

Under these rules, if a union does not timely file an election petition and fee, the union loses its status as the collective bargaining representative as of the filing deadline.

In each of the new chapters, the first section, Section ERC xx.01, describes the general policy and purpose of chapter.

Section ERC xx.02, include definitions of terms as used in the chapter and defines the scope of application of the chapter as is outlined above.

Sections ERC xx.03(1) limit the right to file a petition to the existing representative and other any labor organization interested in representing the bargaining unit. No provision is made for petitions by employees or by the employer because decertification automatically results if no timely petition is filed by a labor organization.

Sections ERC xx.03(5) provide that no showing of interest is required to support a petition filed by the existing exclusive representative of the bargaining unit, but that a petition filed by another organization must be supported by a 30% showing of interest. The practice and procedure for submission and determination of the showing of interest is made parallel to that in existing s. ERC 11.05 (2), which generally involve a commission determination as to the sufficiency of the showing of interest in the context of the employee personnel data provided by the employer, without providing a copy of the showing of interest to any party other than the party that submitted it.

Sections ERC xx.03(7) specify the time by which a petition must be filed and the consequences that follow from no timely petition being filed by any labor organization. Sections ERC xx.03 (7) (c) each provide that the commission will issue a notice equivalent to a decertification upon the request of any interested party or any affected employee.

Sections ERC xx.04 provide the procedures and consequences of a withdrawal of a petition. Each provides that if withdrawal of a petition leaves no pending timely petition, the consequences are the same as if the existing representative filed the only timely petition, an election was conducted, and no representative achieved the support of 51% of the eligible voters.

Sections ERC xx.05 describe the obligation of the employer and petitioning union(s) to provide the Commission with lists of proposed eligible voters and related information.

Sections ERC xx.06 provide for commission issuance of a direction of election or other dispositional order without an intervening hearing to resolve possible disputes concerning voter eligibility or other matters. In cases where the commission is directing an election, the direction shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by the petitioner or any other interested party, shall be allowed to complete and submit a ballot, subject to the right of any interested party to challenge the eligibility of the voter during post–balloting procedures.

Sections ERC xx.07 provide that all elections are to be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission, with the commission determining on a case by case basis whether the secret balloting shall be conducted on–site, by mail or automated telephone system. Each chapter also contains provisions generally paralleling those in s. ERC 11.09, regarding notice of election, observers, challenge of voters, and count and tally of ballots.

Sections ERC xx.07 (6) provide that if more than one proposed representative appears on the ballot and if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on receipt of a timely request of any party, may conduct a runoff election as provided in ss. 111.70 (4) (d) 4. or 111.83 (4), Stats.

Sections ERC xx.08 and xx.09 provide procedures concerning the commission's certification of results of election and the filing and service of objections to election.

Sections ERC xx.10 provide procedures for commission action on challenges or objections, including the conduct of a hearing if one is needed.

Sections ERC xx.11 list the consequences of no representative achieving support of 51% of the eligible voters in the election. Those consequences are that the commission will issue a certification of the results of the election decertifying the existing representative, and providing that for 12 months from the date of decertification the affected employees shall be nonrepresented and shall not be included in any substantially similar bargaining unit.

Sections ERC xx.12 outline the procedures by which any person aggrieved by a final order of the commission may file and have processed a petition for rehearing.

### Summary of, and comparison with, existing or proposed federal regulations

None.

### Comparison of proposed rules with rules promulgated by adjacent state labor relations agencies

Not applicable. A review of the following adjacent state rules reveals none providing procedures for certification elections conducted on an annual or other regularly periodic basis.

AGENCY Name and Source of Rules:

Minnesota Bureau of Mediation Services

Minnesota Rules,

Chapter 5505 - Private Rules

5505.0100 Definitions.

5505.0200 Purpose, Construction, And Waiver.

5505.0300 Request For Investigation.

5505.0400 Required Information.

5505.0500 Notice Of Hearing And Investigation.

5505.0600 Hearings.

5505.0700 Examination Of Witnesses.

5505.0800 Subpoenas.

5505.0900 Determination Of Representative.

5505.1000 Election Procedure.

5505.1100 Challenge Of Voter.

5505.1200 Consent Election.

5505.1300 Certification Order.

5505.1400 Objections To Certification.

5505.1500 Reconsideration Within One Year.

Chapter 5510 - Public Rules

Representation Matters And Fair Share Fee Challenges; Proceedings Before The Commissioner

Negotiation, Mediation, Impasse Certification, Arbitration, And Intent To Strike Notice

Grievance Procedure

Chapter 520 LMC - Grant Rules

Chapter 5530 – Arbitration Roster Rules

5530.0100 Application.

5530.0200 Policy. 5530.0300 Definitions. 5530.0400 Role Of Bureau. 5530.0500 Status Of Arbitrators. 5530.0600 Arbitrator Qualifications. 5530.0700 Appointment To Roster. 5530.0800 Arbitrator Conduct And Standards. 5530.0900 Panel Selections And Referrals. 5530.1000 Arbitration Proceedings. 5530.1200 Performance Measures. 5530.1300 Disciplinary Or Removal Procedures. Chapter 7315 - Independent Review Rules 7315.0210 Scope. 7315.0300 Policy. 7315.2300 Request For Rehearing. 7315.2400 Petition For Rehearing. 7315.2500 Consideration. 7315.2600 Determination. 7315.2700 Notice Of Rehearing. 7315.2800 Rehearing Procedure. 7315.2900 Decision After Rehearing. **Michigan Public Employment Relations Commission** Michigan Rules R 423.101 - 423.499 - General Rules Part 1. General Provisions Part 2. Mediation Of Labor Disputes Part 3. Fact Finding Part 4. Representation Proceedings. Part 5. Unfair Labor Practice Charges Part 6. Motion Practice Part 7. Hearings Part 8. Filing And Service Of Documents Part 9. Notice Of Public School Strike Or Lockout R 423.501 - 423.514 Administration Of Compulsory Arbitration Act For Labor Disputes In Municipal Police And Fire Departments **Iowa Public Employment Relations Board** Iowa Rules [621] Chapter 1 General Provisions Chapter 2 General Practice And Hearing Procedures Chapter 3 Prohibited Practice Complaints Chapter 4 Bargaining Unit And Bargaining Representative Determination Chapter 5 Elections Chapter 6 Negotiations And Negotiability Disputes Chapter 7 Impasse Procedures Chapter 8 Internal Conduct Of Employee Organizations Chapter 9 Administrative Remedies Chapter 10 Declaratory Orders Chapter 11 State Employee Appeals Of Grievance Decisions And **Disciplinary Actions Illinois Labor Relations Board** Title 80: Public Officials And Employees Subtitle C: Labor Relations Chapter IV: Illinois Labor Relations Board Part 1200 General Procedures Part 1210 Representation Proceedings Part 1220 Unfair Labor Practice Proceedings Part 1230 Impasse Resolution Part 1240 Police Officer Decertification Proceedings **Illinois Educational Labor Relations Board** Title 80: Public Officials and Employees Subtitle C: Labor Relations Chapter III: Illinois Educational Labor Relations Board Part 1100 General Procedures

Part 1105 Hearing Procedures Part 1110 Representation Procedures Part 1120 Unfair Labor Practice Proceedings Part 1125 Fair Share Fee Objections Part 1130 Collective Bargaining And Impasse Resolution Part 1135 University Of Illinois Bargaining Units

#### Summary of factual data

Not applicable.

#### **Initial Regulatory Flexibility Analysis**

The emergency rules and proposed rules have no impact on small business.

#### Fiscal Estimate

Because the filing fees applicable to the annual certification elections are paid by the labor organizations seeking the elections, the emergency rules and proposed rules have no fiscal impact on any public or private sector employer or on the State of Wisconsin.

#### **Economic Impact Analysis**

The emergency rules and proposed permanent rules do not have an economic impact on businesses, local governmental units, or individuals. The rules do not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state. The rules provide the benefit of advising affected labor organizations and public sector employers as to how the Commission will conduct the elections mandated by the Legislature. Without the rules, the affected parties would have to guess as to how the elections would be conducted, what the level of the filing fee mandated by 2011 Wisconsin Act 32 will be, and who is obligated to pay said fee. There are no equivalent approaches available for comparison in the federal sector or contiguous states.

#### **Agency Contact Person**

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#### **Text of Proposed Rule**

**CHAPTER ERC 70** 

ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL SCHOOL DISTRICT EMPLOYEES WHO, AS OF AUGUST 30 ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR AFTER JUNE 29, 2011.

**ERC 70.01 Policy.** This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., requiring the commission to conduct an annual election, no later than December 1, to determine whether collective bargaining representation shall continue for represented municipal sector general school district employees who, as of August 30, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement or or after June 29, 2011. The existing exclusive representation, or any other labor organization interested in representation, or any other labor organization interested in representing such employees must file a petition on or before August 30 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible

to vote favor collective bargaining representation by the petitioner or another petitioning labor organization. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure after the ballots have been cast for resolving outcome-determinative issues concerning which ballots should be counted and any other potentially outcome-determinative issues. Once a timely petition has filed, an existing representative's exclusive been representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before December 1.

**ERC 70.02 Scope (1)** BARGAINING UNITS COVERED. This chapter applies only to bargaining units of general municipal employees as defined in s. 111.70 (1) (fm), Stats., who, as of August 30, are all of the following:

(a) School district employees.

(b) Represented by an exclusive representative.

(c) Not subject to a collective bargaining agreement or subject to a collective bargaining agreement entered into on or after June 29, 2011.

(2) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of employees who, as of August 30, are any of the following:

(a) Public safety employees defined in s. 111.70 (1) (mm), Stats.

(b) Transit employees defined in s. 111.70 (1) (p), Stats.

(c) Nonschool district employees.

**ERC 70.03 Petition for election.** (1) WHO MAY FILE. A petition for an annual election to determine whether a represented municipal sector general school district employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) FORM. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signature or a facsimile of the signature of the party or representative filing the petition. A petition is not filed unless it is accompanied by the applicable fee established by s. ERC 70.03 (4), contains the required signature or signature facsimile and has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The petition shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the petition is filed in paper form, a total of two copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON A MUNICIPAL EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition

on the municipal employer of the employees the labor organization currently represents or wishes to represent.

(4) FEE SCHEDULE. For a bargaining unit of 1-100 eligible voters, the petitioning labor organization shall pay the commission a fee of \$200. For a bargaining unit of 101-250 eligible voters, the petitioning labor organization shall pay the commission a fee of \$350. For a bargaining unit of 251-500 eligible voters, the petitioning labor organization shall pay the commission a fee of \$500. For a bargaining unit of 501-1000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$750. For a bargaining unit of 1001-3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) SHOWING OF INTEREST. No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) CONTENTS. The petition shall include all of the following:

(a) The name, address and affiliation, if any, of the petitioner, and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(b) The name and address of the municipal employer involved, and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(c) A description of the bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an annual certification election to determine whether the bargaining unit shall be represented by the petitioner for purposes of collective bargaining with the municipal employer.

(g) A statement that the petitioner has served a copy of the petition on the municipal employer.

(h) Any other relevant facts.

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing*. To be timely, a petition must be filed on or before August 30.

(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply:

1. If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of August 30. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date in sub. (b). 1.

(c) *Notice of consequences of failure to timely file petition.* At the request of the municipal employer or of any other interested party, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the municipal employer, the former exclusive representative and any interested party who requested the issuance of the notice.

**ERC 70.04 Withdrawal of petition.** Any petition may be withdrawn at any time prior to the issuance of a final order based on it, by motion granted by the commission. A motion to withdraw shall be granted unless withdrawal would result in an injustice to any party. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 70.03 (7) (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 70.03 (7) (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 70.03 (7) (a).

ERC 70.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY MUNICIPAL EMPLOYER. Within 10 days of its receipt of the petition pursuant to s. ERC 70.03, the municipal employer shall furnish to the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period in which the first timely petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit and location. The commission shall designate the number of copies of the paper form list to be provided. If the commission so directs, the municipal employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the municipal employer furnishes the commission with personnel data, the municipal employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) RESPONSE TO PERSONNEL DATA. Within 10 days of receipt of the personnel data from the municipal employer, the petitioner shall electronically provide the commission and the municipal employer with an alphabetical list of the names of personnel that should be added to or deleted from the municipal employer's personnel list.

ERC 70.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by a petitioning labor organization shall be allowed to vote, subject to the right the municipal employer and any petitioning labor organization to challenge the eligibility of the voter.

**ERC 70.07 Elections. (1)** NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT. All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on–site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) NOTICE OF ELECTION. The municipal employer shall post notices to personnel concerning the election at times, locations and in a form specified by the commission.

(3) OBSERVERS. Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) CHALLENGE OF VOTERS. (a) *Who may challenge; nature of challenge*. Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) COUNT AND TALLY OF BALLOTS. Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers, and the commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) INCONCLUSIVE ELECTIONS. When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.70 (4) (d) 4., Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

ERC 70.08 Certification of results of election. If challenged ballots are insufficient in number to affect the

results, and no runoff election is needed, and no timely objections are filed under s. ERC 70.09, the commission shall issue to the parties a certification of the results of the election.

**ERC 70.09 Objections to election. (1)** FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the required signature or signature facsimile and has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections are filed in paper form, a total of two copies of the objections shall be included.

(2) SERVICE ON OTHER PARTIES. The party filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

**ERC 70.10 Commission action on challenges or objections. (1)** HEARING. If ballot challenges may affect the election outcome or if objections raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

(2) AFTER HEARING. As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

**ERC 70.11 Consequences of failure to achieve support of 51% of those eligible to vote in the annual certification election.** If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the election including a notice of the following:

(1) If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the date of the commission's certification of results. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.

(2) The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date specified in sub. (1).

**ERC 70.12 Petition for rehearing.** Any person aggrieved by a final order of the commission may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and

supporting authorities. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

#### **CHAPTER ERC 71**

ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL NONSCHOOL DISTRICT EMPLOYEES WHO, AS OF JANUARY 30, ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR AFTER JUNE 29, 2011.

ERC 71.01 Policy. This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., requiring the commission to conduct an annual election, no later than May 1, to determine whether collective bargaining representation shall continue for represented municipal sector general nonschool district employees who, as of January 30, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement entered into on or after June 29, 2011. The existing exclusive representative of such employees that wishes to continue said representation, or any other labor organization interested in representing such employees must file a petition on or before January 30 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner or another petitioning labor organization. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure after the ballots have been cast for resolving outcome-determinative issues concerning which ballots should be counted and any other potentially outcome determinative issues. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before May 1.

**ERC 71.02 Scope.** (1) BARGAINING UNITS COVERED. This chapter applies only to bargaining units of general municipal employees as defined in s. 111.70 (1) (fm), Stats., who, as of January 30, are all of the following:

(a) Nonschool district employees.

(b) Represented by an exclusive representative.

(c) Not subject to a collective bargaining agreement or subject to a collective bargaining agreement entered into on or after June 29, 2011.

(2) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of employees who, as of January 30, are any of the following:

(a) Public safety employees defined in s. 111.70 (1) (mm), Stats.

(b) Transit employees defined in s. 111.70 (1)(p), Stats.

(c) School district employees.

**ERC 71.03 Petition for election (1)** WHO MAY FILE. A petition for an annual election to determine whether a represented municipal sector general employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed only by the exclusive

representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) FORM. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signature or a facsimile of the signature of the party or representative filing the petition. A petition is not filed unless it is accompanied by the applicable fee established by s. ERC 71.03 (4), contains the required signature or signature facsimile and unless and has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The petition shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the petition is filed in paper form, a total of two copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON MUNICIPAL EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the municipal employer of the employees the labor organization currently represents or wishes to represent.

(4) FEE SCHEDULE. For a bargaining unit of 1–100 eligible voters, the petitioning labor organization shall pay the commission a fee of \$200. For a bargaining unit of 101-250 eligible voters, the petitioning labor organization shall pay the commission a fee of \$350. For a bargaining unit of 251-500 eligible voters, the petitioning labor organization shall pay the commission a fee of \$500. For a bargaining unit of 501-1000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$750. For a bargaining unit of 1001-3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) SHOWING OF INTEREST. No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) CONTENTS. The petition shall include all of the following:

(a) The name, address and affiliation, if any, of the petitioner, and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(b) The name and address of the municipal employer involved, and the name, address and phone number of its

principal representative. Fax numbers and e-mail addresses shall be included, if available.

(c) A description of the bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an annual certification election to determine whether the bargaining unit shall be represented by the petitioner for purposes of collective bargaining with the municipal employer.

(g) A statement that the petitioner has served a copy of the petition on the municipal employer.

(h) Any other relevant facts.

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing*. To be timely, a petition must be filed on or before January 30.

(b) *Consequences of failure to timely file.* If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of January 30. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of collective bargaining as of the expiration of the agreement.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date in sub. (b). 1.

(c) *Notice of consequences of failure to timely file petition.* At the request of the municipal employer or of any other interested party, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the municipal employer, the former exclusive representative and any interested party who requested the issuance of the notice.

**ERC 71.04 Withdrawal of petition.** Any petition may be withdrawn at any time prior to the issuance of a final order based on it, by motion granted by the commission. A motion to withdraw shall be granted unless withdrawal would result in an injustice to any party. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 71.03 (7) (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 71.03 (7) (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 71.03 (7) (a).

**ERC 71.05 Action following filing of petition.** (1) FURNISHING OF PERSONNEL DATA BY MUNICIPAL EMPLOYER.

Within 10 days of its receipt of the petition pursuant to s. ERC 71.03, the municipal employer shall furnish the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period during which the first timely election petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit and location. If the commission so directs, the municipal employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the municipal employer furnishes the commission with personnel data, the municipal employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) RESPONSE TO PERSONNEL DATA. Within 10 days of receipt of the personnel data from the municipal employer, the petitioner shall electronically provide the commission and the municipal employer with an alphabetical listing of the names of personnel that should be added to or deleted from the municipal employer's personnel list.

ERC 71.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by a petitioning labor organization shall be allowed to vote, subject to the right of the municipal employer and any petitioning labor organization to challenge the eligibility of the voter.

**ERC 71.07 Elections.** (1) NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT. All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on–site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) NOTICE OF ELECTION. The municipal employer shall post notices to personnel concerning the election at times, locations and in a form specified by the commission.

(3) OBSERVERS. Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) CHALLENGE OF VOTERS. (a) *Who may challenge; nature of challenge.* Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) COUNT AND TALLY OF BALLOTS. Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers. The commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) INCONCLUSIVE ELECTIONS. When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.70 (4) (d) 4., Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

**ERC 71.08 Certification of results of election.** If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 71.09, the commission shall issue to the parties a certification of the results of the election.

**ERC 71.09 Objections to election.** (1) FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the required signature or signature facsimile and has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections are filed in paper form, a total of two copies of the objections shall be included.

(2) SERVICE ON OTHER PARTIES. The party filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

**ERC 71.10 Commission action on challenges or objections. (1)** HEARING. If ballot challenges may affect the election outcome or if objections raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

(2) AFTER HEARING. As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

**ERC 71.11 Consequences of failure to achieve support of 51% of those eligible to vote in the annual certification election.** If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the election including a notice of the following:

(1) If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as the date of commission's certification of results. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.

(2) The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date specified in sub.(1).

**ERC 71.12 Petition for rehearing.** Any person aggrieved by a final order of the commission may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

#### **CHAPTER ERC 80**

ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED STATE SECTOR GENERAL **EMPLOYEES WHO AS OF AUGUST 30 ARE NOT** SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A BARGAINING AGREEMENT COLLECTIVE ENTERED INTO ON OR AFTER JUNE 29, 2011.

ERC 80.01 Policy. This chapter implements the portion of s. 111.83 (3) (b), Stats., requiring that the commission conduct an annual election no later than December 1, to determine whether collective bargaining representation shall continue for represented state sector general employees who, as of August 30, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement entered into on or after June 29, 2011. The existing exclusive representative of such employees that wishes to continue said representation, or any other labor organization interested in representing such employees, must file a petition on or before August 30 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner or another petitioning labor organization. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure for resolving outcome determinative issues after the ballots have been cast concerning which ballots should be counted and any other potentially outcome-determinative issues. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before December 1.

**ERC 80.02 Scope.** (1) BARGAINING UNITS COVERED. This chapter applies only to bargaining units that are all of the following:

(a) General state employee bargaining units defined in s. 111.825, Stats.

(b) Represented by an exclusive representative.

(2) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of any of the following:

(a) Public safety employees defined in s. 111.81 (15r), Stats.

(b) General state employees who are not represented for purposes of collective bargaining.

**ERC 80.03 Petition for election (1)** WHO MAY FILE. A petition for an annual election to determine whether a represented state sector general employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed only by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) FORM. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signature or a facsimile of the signature of the party or representative filing the petition. A petition is not filed unless it is accompanied by the applicable filing fee established by s. ERC 80.03 (3), contains the required signature or signature facsimile and has been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The petition shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the petition is filed in paper form, a total of two copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON STATE EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the State employer.

(4) FEE SCHEDULE. For a bargaining unit of 1–100 eligible voters, the petitioning labor organization shall pay the commission a fee of \$200. For a bargaining unit of 101-250 eligible voters, the petitioning labor organization shall pay the commission a fee of \$350. For a bargaining unit of 251-500 eligible voters, the petitioning labor organization shall pay the commission a fee of \$500. For a bargaining unit of 501-1000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$750. For a bargaining unit of 1001-3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the

petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) SHOWING OF INTEREST. No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) CONTENTS. The petition shall include all of the following:

(a) The name, address and affiliation, if any, of the petitioner, and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(b) The name and address of the state employer involved, and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(c) A description of the statutory bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to continue to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an annual certification election to determine whether the bargaining unit shall continue to be represented by the petitioner for purposes of collective bargaining with the state employer.

(g) A statement that the petitioner has served a copy of the petition on the employer.

(h) Any other relevant facts.

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing*. To be timely, a petition must be filed on or before August 30.

(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply:

1. The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of August 30.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date in sub. (b) 1.

(c) *Notice of consequences of failure to timely file petition.* At the request of the State employer or of any employee in the bargaining unit involved, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to

the State employer, the former exclusive representative and any interested party who requested the issuance of the notice.

**ERC 80.04 Withdrawal of petition.** Any petition may be withdrawn at any time prior to the issuance of a final order based on it, by motion granted by the commission. A motion to withdraw shall be granted unless withdrawal would result in an injustice to any party. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 80.03 (7) (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 80.03 (7) (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 80.03 (7) (a).

ERC 80.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY STATE EMPLOYER. Within 10 days of its receipt of the petition pursuant to s. ERC 80.03, the State employer shall furnish the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period during which the first timely election petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit and location. If the commission so directs, the State employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the State employer furnishes the commission with personnel data, the State employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) RESPONSE TO PERSONNEL DATA. Within 10 days of receipt of the personnel data from the State employer, the petitioner shall electronically provide the commission and the State employer with an alphabetical list of the names of personnel that should be added to or deleted from the State employer's personnel list.

ERC 80.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the State employer and on the list, if any, provided by a petitioning labor organization, shall be allowed to vote, subject to the right of the State employer and any petitioning labor organization to challenge the eligibility of the voter.

**ERC 80.07 Elections. (1)** NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT. All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted

on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) NOTICE OF ELECTION. The State employer shall post notices to personnel concerning the election, at times, locations and in a form specified by the commission.

(3) OBSERVERS. Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) CHALLENGE OF VOTERS. (a) Who may challenge; nature of challenge. Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) COUNT AND TALLY OF BALLOTS. Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers, and the commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) INCONCLUSIVE ELECTIONS. When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.83 (4), Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

**ERC 80.08 Certification of results of election.** If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 80.09, the commission shall issue to the parties a certification of the results of the election.

**ERC 80.09 Objections to election.** (1) FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the required signature or signature facsimile and unless and until it has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the objections shall be included.

(2) SERVICE ON OTHER PARTIES. The party filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

**ERC 80.10 Commission action on challenges or objections. (1)** HEARING. If ballot challenges may affect the election outcome or if objections raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08. (2) AFTER HEARING. As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

**ERC 80.11 Consequence of failure to achieve support of 51% of those eligible to vote in the annual certification election.** If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the election including a notice of the following:

(1) The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the date of the commission's certification of results.

(2) The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the date specified in sub. (1).

**ERC 80.12 Petition for rehearing.** Any person aggrieved by a final order of the commission may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

#### Effective Date.

These permanent rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

#### **Notice of Hearings**

#### Safety and Professional Services — Real Estate Examining Board CR 13–100

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Real Estate Examining Board in sections 15.08 (5) (b), 227.11 (2), 452.07 (1m), and 452.12 (6) (a), Stats., and interpreting sections 452.07 (1m), 452.05 (1) (b), and 452.07, Stats., the Real Estate Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal Chapters REEB 22 and 26 and amend sections 11.01 (intro.), 11.02 (intro.) 12.04 (1) (intro.) and (2) (intro.), and 25.065 (1) and (Note), relating to apprentices and inactive licenses.

#### **Hearing Information**

Date:	Thursday, February 20, 2014
Time:	10:00 a.m.
Locations:	1400 East Washington Avenue
	(Enter at 55 North Dickenson Street)
	Room 121A
	Madison, Wisconsin

#### Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions, and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708–8935. Written comments must be received at or before the public hearing to be included in the record of rule–making proceedings.

### Place where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Jean MacCubbin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8366, or by email to Jean.MacCubbin@wisconsin.gov. Comments must be received at or before the public hearing to be held on February 20, 2014, to be included in the record of rule-making proceedings.

#### **Copies of Rule**

Copies of this proposed rule are available upon request to Jean MacCubbin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708–8366, by email at Jean.MacCubbin@wisconsin.gov or on our website at http://dsps.wi.gov/.

### Analysis Prepared by the Department of Safety and Professional Services

#### Statutes interpreted

Section 452.07 (1) and (1m), Stats.

#### Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 452.07 (1m), and 452.12 (6) (a), Stats.

#### Explanation of agency authority

Examining boards are generally authorized by ss. 15.08 (5) (b) and 227.11 (2) (a), Stats., to promulgate rules for their own guidance and for guidance within the profession and to promulgate rules interpreting any statute enforced or administered by it. Under s. 452.07 (1m), Stats., the board shall advise the secretary on rulemaking relating to licensees and promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice. Section 452.12 (6) (a), Stats., sunset on October 31, 1995; it states that: "Any licensee, except a time–share salesperson registered under s. 452.025, may apply for registration as an inactive licensee on or before the license renewal date. This paragraph does not apply after October 31, 1995."

#### Related statute or rule

Chapters REEB 1 to 26.

#### Plain language analysis

In response to Executive Order 61, the Real Estate Examining Board reviewed their rules, Chs. REEB 1 to 26, and identified two areas that either no longer reflected contemporary industry practices or had sunset by state statutes.

While provided through statutory authority, s. 452.12 (6) (a), Stats., an individual may apply for a registration as an apprentice under a supervisory broker. In this review, it was determined that such the process in ch. REEB 22, relating to apprentices, is no longer followed in practice. Real estate brokers have the opportunity to train future license applicants as unlicensed professionals and do so in a less formal mentoring role within the guidelines of the duties of a supervising broker. The Board, therefore, chose to eliminate this chapter in its entirety.

Regarding the review of ch. REEB 26, inactive licenses, it was found that although a process was in place for recognizing inactive licenses, the agency had only received one application in the past 18 months and that license has since expired. In addition, s. 452.12 (6) (a), Stats., provided for applications for inactive licenses, this section sunset on October 31, 1995. The Board, therefore, chose to eliminate this chapter in its entirety.

SECTION 1. This section proposes various amendments related chapters in the REEB series (chs. REEB 1 to 26). Specifically proposed is to delete references to chs. REEB 22 and 26, and references in the renewal sections if the individual had the status of an inactive licensee and references to s. 452.12 (6), Stats., specific to inactive licensees.

SECTION 2. This section proposes to repeal both chapters REEB 22, apprentices, and REEB 26, inactive licenses.

SECTION 3. This section defines the effective date of this rule once through the rulemaking process as specified in s. 277.11 (12), Stats.

### Summary of, and comparison with, existing or proposed federal regulation

The federal government does not mandate licenses for active or inactive real estate brokers or salespersons; or are there laws regarding apprenticeships in the real estate profession.

#### Comparison with rules in adjacent states

The following information is a result of an Internet–based search for the four adjacent states.

**Illinois:** The state of Illinois does not license or have requirements for application as a real estate apprentice. Illinois codes and law do not provide for an inactive license. [Title 68b: professions and occupations, part 1450 real estate license act of 2000]

**Iowa:** The state of Iowa does not license or have requirements for application as a real estate apprentice. An inactive status in Iowa is required (only) when a salesperson is no longer employed by a broker or is in the process of transferring to another broker. [Iowa code 543B.33]

**Michigan:** The state of Michigan does not license or have requirements for application as a real estate apprentice. Michigan law does not provide for inactive real estate licenses. [ch. 339, Article 25 of Public Act 299 of 1980]

**Minnesota:** The state of Minnesota does not license or have requirements for application as a real estate apprentice. Nothing in these state rules provide for an inactive license status. [MN Statutes 82]

#### Summary of factual data and analytical methodologies

In the past year, the board reviewed their rules and found that the training of unlicensed individuals was more beneficial to future license applicants and supervising brokers than the process outlined in ch. REEB 22, relating to apprentices. Supervising brokers are provided with such duties in s. 452.12 (3), Stats.

#### Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis

The Real Estate Examining Board was the primary source for determining the potential impacts of both the technical and administrative elements of these rules. A responsibility of the Board is to bring forth any concerns they may be aware of or have with the current requirements and with rule changes, and any concerns for any potential economic impacts from the changes. In addition, staff was consulted to provide data on the number of inactive and apprentice licenses or requests.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION DOA–2049 (R03/2012)

#### Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

#### Initial Regulatory Flexibility Analysis or Summary

This rule change will not have an effect on small business.

#### **Environmental Assessment/Statement**

Not required.

#### **Agency Contact Person**

Jean MacCubbin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366 Madison, Wisconsin 53708–8366; telephone 608–266–0955 or telecommunication relay at 711; email at Jean.MacCubbin@wisconsin.gov.

> DIVISION OF EXECUTIVE BUDGET AND FINANCE 101 EAST WILSON STREET, 10TH FLOOR P.O. BOX 7864 MADISON, WI 53707–7864 FAX: (608) 267–0372

#### ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Ana	alysis	
X Original Upd	lated Corrected	
2. Administrative Rule Chap	pter, Title and Number	
Chapters REEB 22 & 26,	, apprentices and inactive licenses	
3. Subject		
Real estate apprentices an	nd inactive real estate licenses	
4. Fund Sources Affected		5. Chapter 20, Stats. Appropriations Affected
□ GPR □ FED <b>X</b> PRO	$\square$ PRS $\square$ SEG $\square$ SEG-S	20.165(1)(g)
6. Fiscal Effect of Implement	nting the Rule	
X No Fiscal Effect □ Indeterminate	<ul> <li>Increase Existing Revenues</li> <li>Decrease Existing Revenues</li> </ul>	<ul> <li>Increase Costs</li> <li>Could Absorb Within Agency's Budget</li> <li>Decrease Cost</li> </ul>
7. The Rule Will Impact the	e Following (Check All That Apply)	
☐ State's Economy ☐ Local Government Un		
8. Would Implementation and	nd Compliance Costs Be Greater Than \$20 mi	llion?
$\Box$ Yes X No		

9. Policy Problem Addressed by the Rule

Responding to Executive order 61, the Real Estate Examining Board found in their review of their rules that the basis of one rule chapter, ch. REEB 26 inactive licenses, providing for inactive licenses had sunset on October 31, 1995. In addition, they found that the process of having apprentices was no longer used in the industry. Supervisory real estate brokers continue to have the opportunity to train future license applicants as unlicensed professionals and do so in a less formal mentoring role within the guidelines of the duties of a supervising broker. The Board chose to repeal both chapters REEB 22 and 26.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Licenses particularly those in the role of supervising broker would be affected in a positive manner as they no longer be required to complete and submit forms or document training of apprentices. Within the guidelines of a supervising broker, supervising brokers could continue less formal mentoring of unlicensed individuals in preparation for examination or license application.

11. Identify the local governmental units that participated in the development of this EIA.

None known.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

These rules are not expected to have a fiscal impact on small business, the state's economy as a whole, or other sectors listed above.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

With the repeal of two chapters, minimal internal efficiencies are expected to be realized. Real estate brokers, on the other hand, would continue to mentor unlicensed individuals within the guidelines for supervisory brokers.

14. Long Range Implications of Implementing the Rule

There is expected to be no foreseeable effect of this rule, as one process is rarely used and an alternative process for training exists.

15. Compare With Approaches Being Used by Federal Government

The federal government does not mandate licenses for active or inactive real estate brokers or salespersons; nor are there laws regarding apprenticeships in the real estate profession.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

An Internet–based search revealed that none of the adjacent states license or have requirements for application as a real estate apprentice. Regarding inactive licenses, in Iowa requires an inactive license when a salesperson is no longer employed by a broker or is in the process of transferring to another broker; the other three states have no rules or laws pertaining to inactive status or licenses.

17. Contact Name	18. Contact Phone Number
Jean MacCubbin	608.266.0955

This document can be made available in alternate formats to individuals with disabilities upon request.

### Submittal of Proposed Rules to Legislature

Please check the Bulletin of Proceedings — Administrative Rules for further information on a particular rule.

#### Safety and Professional Services — Veterinary Examining Board CR 13-031

On November 26, 2013, the Veterinary Examining Board submitted proposed rules to the Chief Clerks of the Senate and the Assembly for referral to the appropriate standing committees for review under s. 227.19, Stats. The rules revise sections VE 1.02 (3), 7.01 (1), and 7.02 (3) (a), (4) (c), and (8) (c), relating to standards of practice and unprofessional conduct of veterinarians and certified veterinary technicians.

The Governor approved the rule under s. 227.185, Stats., on November 15, 2013.

#### Safety and Professional Services — Veterinary Examining Board CR 13–032

On November 26, 2013, the Veterinary Examining Board submitted proposed rules to the Chief Clerks of the Senate and the Assembly for referral to the appropriate standing committees for review under s. 227.19, Stats. The rules revise sections VE 2.01 (2), VE 3.05 (5) (b), and VE 4.01 (2) (a) and (3), relating to the licensure, temporary permits, and examinations.

The Governor approved the rule under s. 227.185, Stats., on November 15, 2013.

### **Rule Orders Filed with the Legislative Reference Bureau**

The following administrative rule orders have been filed with the Legislative Reference Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Legislative Reference Bureau at bruce.hoesly@legis.wisconsin.gov or (608) 266–7590 for updated information on the effective dates for the listed rule orders.

#### Agriculture, Trade and Consumer Protection CR 13–003

(DATCP Docket # 12–R–03)

A rule to create Chapter ATCP 49, relating to the Farmland Preservation Program. Effective 1-1-14.

#### Agriculture, Trade and Consumer Protection CR 13–027

(DATCP Docket # 12–R–06) A rule to revise Chapters ATCP 125 and 134, relating to manufactured home communities — fair trade practices. Effective 1-1-14.

Natural Resources Fish, Game, etc., Chs. NR 1— CR 13–019

(DNR # FH-18-12)

An order to revise Chapters NR 20 and 23, relating to fishing regulations on inland, outlying, and boundary waters of Wisconsin.

Effective 1-1-14, in part, and 4-1-14, in part.

### **Public Notices**

#### Department of Financial Institutions Division of Banking

#### Notice of Interest Rate on Required Residential Mortgage Loan Escrow Accounts For 2014

Under Section 138.052 (5) (a), Stats., with some exceptions, a bank, credit union, savings bank, savings and loan association, or mortgage banker, which originates a residential mortgage loan requiring an escrow account to assure the payment of taxes or insurance, shall pay interest on the outstanding principal of the escrow.

Section 138.052 (5) (am) 2., Stats., directs the division of banking to determine annually the required interest rate. The rate is based on the average of interest rates paid on regular passbook deposit accounts by institutions under the division of banking or office of credit unions' jurisdiction.

The Department of Financial Institutions, Division of Banking, has calculated the interest rate required to be paid on escrow accounts under Section 138.052 (5), Stats., to be 0.15% for 2014. This interest rate shall remain in effect through December 31, 2014.

#### **Contact Person**

Mr. Michael J. Mach, Administrator Department of Financial Institutions Division of Banking Telephone (608) 261–7578 The State of Wisconsin Department of Administration Bureau of Document Services Document Sales and Distribution Section 4622 University Avenue Madison, Wisconsin 53705–2156

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