

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3474/P1dn2

RJM:.....

1. The rule-making provisions in proposed s. 101.20 (3) (b), stats., may constitute an unconstitutional delegation of legislative authority. Proposed s. 101.20 (3) (b), stats., requires the department of commerce (department) to promulgate rules regarding hyperbaric chambers. The rules must be as consistent as possible with the applicable national standards promulgated by the American Society of Mechanical Engineers (ASME) and the National Fire Protection Association (NFPA). This consistency requirement is not unusual. Other buildings and safety statutes similarly require rules to be consistent with specific national standards. For example, see s. 101.132 (2) (e) 2., stats.

However, proposed s. 101.20 (3) (b), stats., may be unconstitutional to the extent that it requires the department to amend the rules if the applicable national standards change. In passing this provision, the legislature may be unconstitutionally delegating its law-making power to the private bodies that draft these national standards. See 68 OAG 9 (1979).

You have at least 2 different options to eliminate this constitutional issue. First, you could specify which version of the standards the legislature intends to incorporate. For example, the draft could specifically require the rules to be consistent with the 1997 safety standard for pressure vessels for human occupancy, promulgated by the ASME, and those portions of the 1999 standard for health care facilities, promulgated by the NFPA, that apply to hyperbaric chambers. However, this option may require the legislature to amend the statute over time to remain consistent with the national standards.

Second, you could eliminate the reference to the national standards altogether. Under this option, the department would still be free to adopt the national standards under the procedure outlined in s. 227.21 (2), stats. The department has used this procedure in the past to incorporate standards promulgated by the ASME. See s. COMM 41.10 (2), Wis. Adm. Code (incorporating 1995 ASME boiler and pressure vessel code into chs. COMM 41 and 42, Wis. Adm. Code).

I have drafted proposed s. 101.20 (3) (b), stats., based upon my initial understanding of your intent. However, if you desire any changes to this provision after reading this note, please feel free to call.

2. Per my telephone conversation with Greg Reiman, I have included a penalty provision in this draft. As currently drafted, the penalty for violating proposed s.

101.20, stats., or any rule promulgated under that section, is a forfeiture of up to \$1,000 for each day of violation. See s. 101.02 (12) and proposed s. 101.20 (4), stats. It was difficult to locate a similar statute on which to base the penalty amount. A \$1,000 forfeiture is the maximum forfeiture for violations of s. 101.09, stats., regarding the storage of flammable and combustible liquids. If this penalty is not consistent with your intent, please let me know.

3. This draft requires the department to expand its safety and buildings inspection services to include hyperbaric chambers. This draft allows the department to assess a fee to cover the cost of these inspections. See proposed s. 101.19 (1) (b), stats. Please let me know if you do not approve.

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