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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

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* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

**STATE OF WISCONSIN
EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : EXAMINING BOARD OF ARCHITECTS,
EXAMINING BOARD OF ARCHITECTS, : LANDSCAPE ARCHITECTS,
LANDSCAPE ARCHITECTS, : PROFESSIONAL ENGINEERS,
PROFESSIONAL ENGINEERS, : DESIGNERS AND LAND SURVEYORS
DESIGNERS AND LAND SURVEYORS : ADOPTING RULES
: (CLEARINGHOUSE RULE 09-034)**

TO: Senator Jim Holperin, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 409 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS is submitting in final draft form rules relating to failure to respond to information requests in conjunction with an investigation of a complaint filed against a registrant.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

Thank you.

**STATE OF WISCONSIN
EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS**

**IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
EXAMINING BOARD OF ARCHITECTS, : ON CLEARINGHOUSE RULE 09-034
LANDSCAPE ARCHITECTS, : (s. 227.19 (3), Stats.)
PROFESSIONAL ENGINEERS, :
DESIGNERS AND LAND SURVEYORS :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

The department estimates that the proposed rule will have no significant fiscal impact. The department finds that this rule has no significant fiscal effect on the private sector.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The proposed revisions create discipline for the failure to respond to requests for information from the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, the sections of the board, or the Department of Regulation and Licensing. In addition, the proposed rule requires the registrant to notify the department of disciplinary action in other states where the registrant holds a credential and other violations of law which are substantially related to the practice of the registrant and not otherwise reportable under s. RL 4.09 (2). The purpose of the proposed rule is to encourage the submission of requested information by the registrants to ensure the ability of the regulatory authority to investigate complaints of unprofessional conduct and to determine if discipline by another jurisdiction or other violations of law are substantially related to the practice of the registrant.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on May 27, 2009. Charles Kopplin, Professional Engineer, Greenfield, WI, appeared and spoke in support of the proposed rules

There were no other appearances and no written comments were received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All of the recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

A-E 8.08 CR09-034 (Failure to respond) Report to Leg 6-24-09

STATE OF WISCONSIN
EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : EXAMINING BOARD OF
EXAMINING BOARD OF ARCHITECTS, : ARCHITECTS, LANDSCAPE
LANDSCAPE ARCHITECTS, : ARCHITECTS, PROFESSIONAL
PROFESSIONAL ENGINEERS, : ENGINEERS, DESIGNERS AND LAND
DESIGNERS AND LAND SURVEYORS : SURVEYORS ADOPTING RULES
: (CLEARINGHOUSE RULE 09-034)

PROPOSED ORDER

An order of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors to create A-E 8.08 (3) and (4), relating to failure to respond to information requests in conjunction with an investigation of a complaint filed against a registrant.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Sections 443.11, 443.12 and 443.13, Stats.

Statutory authority:

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Explanation of agency authority:

The Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, or the applicable section of the board, under the authority of ss. 15.08 (5) (b) and 443.06 to 443.13, Stats., may discipline an architect, landscape architect, professional engineer, designer or land surveyor for violating the rules of professional conduct set forth in ch. A-E 8.

Related statute or rule:

There are no other statutes or rules other than those listed above.

Plain language analysis:

SECTION 1. The proposed revisions to s. A-E 8.08 create discipline for the failure to respond to requests for information from the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, the sections of the board, or the Department of Regulation and Licensing. In addition, the proposed rule requires the registrant to notify the department of disciplinary action in other states where the registrant holds a credential and other violations of law which are substantially related to the practice of the registrant and not otherwise reportable under s. RL 4.09 (2). The purpose of the proposed rule is to encourage the submission of requested information by the registrants to ensure the ability of the regulatory authority to investigate complaints of unprofessional conduct and to determine if discipline by another jurisdiction or other violations of law are substantially related to the practice of the registrant.

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

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states:

Iowa:

There are no rules for architects, engineers, land surveyors and landscape architects to provide information in response to written requests.

Illinois:

225 ILCS 305/22(14) Architects – Discipline may arise for “failure to provide information in response to a written request made by the Department within 30 days after the receipt of such written request.” 225 ILCS 315/18.1(7) Landscape architects – “Failing to provide information within 60 days in response to a written request made by the Department.” 225 ILCS 325/24(a-1)(8) Professional engineers – “Failing to provide information in response to a written request made by the Department within 30 days after receipt of such written request.” 225 ILCS 330/27(8) Land surveyor – Failing to provide information in response to a written request made by the Department within 30 days after receipt of such written request.”

Michigan:

Architects – none. Rule 339.19049 (7) Landscape architects – “A registrant shall not act to conceal violations of the law...” Engineers – none. Land Surveyors – none.

Minnesota:

Rule 1805.1600 “A licensee who has knowledge or reasonable grounds for believing that another member of the profession has violated any statute or rule regulating the practice of the profession shall have the duty of presenting such information to the board. A licensee, when questioned concerning any alleged violation on the part of another person by any member or authorized representative of the board commissioned or delegated to conduct an official inquiry, shall neither fail nor refuse to divulge such information as the licensee may have relative thereto.” (Relates to architects, engineers, land surveyors, and landscape architects.)

Summary of factual data and analytical methodologies:

Research of the rules and policies of surrounding states and correspondence with colleagues in other states pertaining to the issue was performed. Additionally, the matter was addressed with the department’s Division of Enforcement staff, along with a review of other professions regulated by this department that have failure to respond provisions in their rules. By all accounts, having failure to respond provisions in the rules is important to encourage the submission of requested information by the registrants to ensure the ability of the regulatory authority to investigate complaints of unprofessional conduct and to determine if discipline by another jurisdiction or other violations of law are substantially related to the practice of the registrant. Moreover, it will help to reduce the difficulty and potential backlog that the Division of Enforcement is faced with in cases such as this.

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

This rule change will not affect or impact adversely small businesses. No written analysis or formal research was involved in reaching this conclusion.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The department estimates that the proposed rule will have no significant fiscal impact.

Effect on small business:

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at hector.colon@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-266-0495; email at pamela.haack@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to pamela.haack@wisconsin.gov. Comments must be received on or before June 5, 2009, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. A-E 8.08 (3) and (4) are created to read:

A-E 8.08 (3) Shall respond in a timely manner to a request by the board, a section of the board or the department for information in conjunction with an investigation of a complaint filed against a registrant. There is a rebuttable presumption that a registrant who takes longer than 30 days to respond to a request for information has not acted in a timely manner.

(4) Shall notify the department in writing if the registrant has been disciplined for unprofessional conduct in other states where the registrant holds a credential or has violated federal or state laws, local ordinances or administrative rules, not otherwise reportable under s. RL 4.09 (2), which are related to the practice of an architect, landscape architect, professional engineer, designer or land surveyor. The notification shall be submitted within 48 hours of the disciplinary finding or violation of law and shall include copies of the findings, judgments and orders so that the department may determine whether the circumstances are substantially related to the practice of the registrant.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Chairperson
Examining Board of Architects, Landscape
Architects, Professional Engineers,
Designers and Land Surveyors

A-E 8.08 CR09-034 (Failure to respond) Draft to Leg 6-24-09



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 09-034

AN ORDER to create A-E 8.08 (3) and (4), relating to failure to respond to information requests in conjunction with an investigation of a complaint filed against a registrant.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

04-17-2009 RECEIVED BY LEGISLATIVE COUNCIL.

05-15-2009 REPORT SENT TO AGENCY.

RNS:SG

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 09-034

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. In the plain language analysis section of the rule analysis, the phrase “amend the current rules to” should be stricken from the first sentence. “Amend” and “create” are separate terms of art in the rule promulgation context and should be used in accordance with their technical meanings. Similarly, “proposed” should replace “amended” in the second sentence and “proposed rule” should replace “rule amendment” in the third sentence.

b. In s. A-E 8.08 (3), should “the section” be replaced with “a section of the board” in order to better conform to the definition in s. A-E 1.02 (3)?

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

a. In the statutes interpreted section of the rule analysis, should the board refer to additional sections of ch. 443, Stats.?

b. The board also should describe s. 15.08 (5) (b), Stats., in the explanation of agency authority section of the rule analysis.