



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-058

Comments

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

1. Statutory Authority

The proposed rule does not appear to meet the standard that is required to submit a petition under s. 227.26 (4), Stats., for expedited repeal of an unauthorized rule. An “unauthorized rule” is a rule that an agency lacks the authority to promulgate due to the repeal or amendment of the law that previously authorized its promulgation. [s. 227.26 (4) (a), Stats.] The agency’s explanation of the proposed rule does not cite the repeal or amendment of any law that has changed the department’s rulemaking authority.

The department notes that one provision the proposed rule would repeal is a two-year pilot program, which has been completed. While this suggests that the provision is obsolete and could be repealed under the regular rule promulgation procedures, the standard to submit a petition for expedited repeal requires a repeal or amendment of the law that previously authorized its promulgation.

In addition, for the other provision the proposed rule would repeal, the department states that there is no statutory authority to require only 50 percent payment of forfeiture or storage charges for leased or rented vehicles. However, there is statutory authority for the department to reduce the amount due from an owner of a rental or leased vehicle to 50 percent of the amount of a forfeiture or towing and storage charges, *if* the owner is unable to recoup the amount of the forfeiture from the renter or lessee because the renter or lessee did not pay the rental or lease fee with a credit card, or paid with a credit card for which payment of the forfeiture or towing and storage charges are being declined by the issuer of the credit card. [See s. 345.28 (5w) (b), Stats.,

which is incorporated by reference in s. 345.28 (5m) (c) and (5r) (c), Stats.] The department could consider revising the rule provision, rather than repealing it, to identify the circumstance in which a reduced payment may be accepted.

2. Form, Style and Placement in Administrative Code

a. It is not clear that the rule interprets all of the statutes listed in the rule summary's listing of statutes interpreted. The department should consider whether certain of these statutes might instead be placed in the rule summary's listing of related statutes or rules.

b. Similarly, it appears that the listing of statutory authority should cite s. 85.16 (1), Stats. The other cited provisions could be removed from the listing of statutory authority, as those provisions set forth certain requirements that are interpreted by the department, and do not address rule promulgation authority.