

## Clearinghouse Rule 18-056

### STATE OF WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND	:	PROFESSIONAL SERVICES
PROFESSIONAL SERVICES	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE )

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The Department of Safety and Professional Services is petitioning the Joint Committee for Review of Administrative Rules to repeal rules the department has determined to be an unauthorized rule using the process under s. 227.26 (4), Stats.

#### PROPOSED ORDER

An order of the Department of Safety and Professional Services *to repeal* SPS 302.35, 305.67, and Ch. 367, and *to amend* SPS 302.52 (2), relating to rental unit energy efficiency.

Analysis prepared by the Department of Safety and Professional Services.

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#### ANALYSIS

##### **Statutes interpreted:**

Section 227.26 (4), Stats., and 2017 Wisconsin Act 59, sections 1306 to 1312, 9339, and 9439

##### **Statutory authority:**

Sections 101.02 (20) (a), (21) (a), and (24) (a) 2., 101.19 (1g) (i) and (1r), and 101.122, 2016 Stats., 227.11 (2) (a), Stats., and 2017 Wisconsin Act 59.

##### **Explanation of agency authority:**

Pursuant to s. 101.19 (1g), 2016 Stats., the Department of Safety and Professional Services was required to establish and collect fees that, as closely as possible, equal the cost of providing certain services. Section 101.19 (1g) (i), 2016 Stats., required the Department to collect fees for the inspection and certifying of rental units under s. 101.122 (4), 2016 Stats., and certify and train inspectors under ss. 101.122 (2) (c) and (d), 2016 Stats.

Pursuant to s. 101.122, 2016 Stats., the Department of Safety and Professional Services was required to establish a code of minimum energy efficiency standards for dwelling units.

2017 Wisconsin Act 59 repeals ss. 101.19 (1g) (i) and 101.122, 2016 Stats.

Section 227.11 (2) (a), Stats., sets forth the parameters of an agency's rule-making authority, stating an agency, "may promulgate rules interpreting provisions of any statute enforced or administered by the agency. . .but a rule is not valid if the rule exceeds the bounds of correct interpretation."

**Related statute or rule:**

Not applicable

**Plain language analysis:**

The proposed rule repeals sections SPS 302.35, 305.67, and chapter SPS 367, and amends section SPS 302.52 (2), relating to the rental unit energy efficiency program, also known as the rental weatherization program.

Section 101.19 (1g) (i), 2016 Stats., required fee schedules for the inspection and certifying of rental units under s. 101.122 (4), 2016 Stats., and the certification and training of inspectors under ss. 101.122 (2) (c) and (d), 2016 Stats.

Section 101.122, 2016 Stats., required most rental dwelling units to comply with rental energy efficiency standards before the ownership of the rental unit is transferred.

2017 Wisconsin Act 59 repealed ss. 101.19 (1g) (i) and 101.122, 2016 Stats., which eliminated the rental unit energy efficiency program effective January 1, 2018. The repeal of s. 101.122, 2016 Stats., also eliminates the rental weatherization program under chapter SPS 367 and the Department's administrative requirements and authority relating to the weatherization code (ss. SPS 302.35, 302.52 (2), and 305.67).

**Agency contact person:**

Mindy Allen, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53705; telephone 608-266-2112; email at DSPSAdminRules@wisconsin.gov.

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TEXT OF RULE

SECTION 1. SPS 302.35 is repealed.

SECTION 2. SPS 302.52 (2) is amended to read:

**SPS 302.52 (2)** PETITIONS FOR VARIANCE ON RULES UNDER CHS. SPS 320 TO 325, UNIFORM DWELLING CODE, AND CH. SPS 327, CAMPING UNITS, ~~AND CH. SPS 367, RENTAL UNIT ENERGY EFFICIENCY CODE.~~ The fee for reviewing petitions for variance on rules under chs. SPS 320 to 325, and 327, ~~and 367~~ shall be \$175.00 per petition.

SECTION 3. SPS 305.67 is repealed.

SECTION 4. Chapter SPS 367 is repealed.

SECTION 5. EFFECTIVE DATE. The rules repealed 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.

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(END OF TEXT OF RULE)

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