



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-053

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 meets 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 for which an agency lacks the authority to promulgate the rule due to the repeal or amendment of the law that previously authorized its promulgation.

In the case of SECS. 1 and 3 of the proposed rule, the department’s authority to promulgate a rule creating a permit exemption for certain construction activity on the basis that an applicant was already regulated by the Department of Safety and Professional Services (DPS) was rendered obsolete when DPS regulatory authority for that same activity was removed by an amendment to s. 101.1206, Stats., in 2013 Wisconsin Act 20.

In the case of SEC. 2 of the proposed rule, the department’s authority to promulgate a rule creating a permit exemption for certain activities of the Department of Transportation (DOT) was removed by amendments to ss. 30.2022 and 283.33, Stats., by 2015 Wisconsin Act 307.

2. Form, Style and Placement in Administrative Code

a. In the rule summary’s listing of statutory authority, the citations to ss. 227.26 (4) (b) and 227.29 (1) (a), Stats., should be removed. Those provisions establish the expedited repeal process and require an annual report by each agency of unauthorized rules, respectively. They do not remove or confer rulemaking authority for the subject matter addressed in the proposed rule. [s. 1.02 (2m) (a), Manual.]

b. In the rule summary's plain language analysis, "ch." should be changed to "s." in the first sentence.

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

In the rule summary's listing of statutes interpreted, the department cites 2013 Wisconsin Act 20. Due to the comprehensive nature of that law, the department may want to cite SECS. 1628 and 2098 of that law in particular.