



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-060

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.¹ 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.

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 provision could be removed from the listing of statutory authority, as that provision sets forth certain requirements that are interpreted by the department, and does not address rule promulgation authority.

¹ Although the rule does not appear to meet the standard that is required for expedited repeal of an unauthorized rule, the rule could be submitted for repeal under the regular rule promulgation procedures.