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CLEARINGHOUSE RULE 96-099

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. In a memorandum dated June 14, 1996, submitted with the proposed rules, Code Consultant Duane Hubeler requested a clearinghouse comment regarding the potential conflict of the proposed rules with s. 443.15 (1), Stats., which provides that:

443.15 Exempt Buildings. (1) Nothing in this chapter prevents any person from advertising and performing services, including consultation, investigation, evaluation, in connection with and making plans and specifications for, or supervising the erection, enlargement or alterations of any of the following buildings:

- (a) Dwellings for single families, and outbuildings in connection with single-family dwellings, including, but not limited to, barns and private garages.
- (b) Apartment buildings used exclusively as the residence of not more than 2 families.

The proposed rules, which require the services of a registered engineer or architect to design all or part of certain one- and two-family dwellings that are constructed in certain flood zones, do not appear to conflict with this statutory provision.

First, the statute provides that “Nothing in this chapter,” e.g., ch. 443, Stats., shall prevent any person from performing certain services. Since the proposed rules are not derived from the authority in ch. 443, Stats., the statutory prohibition is inapplicable.

Also, the proposed rules are adopted, pursuant to ss. 101.63 (1) and 101.64 (3), Stats., to “establish standards for the construction and inspection of one- and two-family dwellings” and to periodically revise such rules. As such, the rules in no way are attempting to regulate the practice of architecture and engineering in this state, which is the purpose of ch. 443, Stats.

2. Form, Style and Placement in Administrative Code

a. In order to be consistent with the provisions of ch. ILHR 21, the creation of subch. X of ch. ILHR 21 should include a title to the new subchapter.

b. In s. ILHR 21.33 (2) (a), delete all material after the first “floor” and substitute “and all basement floor surfaces are located at or above the base flood elevation.”

c. In s. ILHR 21.33 (2) (b), in the second sentence, delete “the requirements of”; and, in sub. (3), delete “the provisions of.”

d. In s. ILHR 21.33 (6), substitute “using” for “with.”

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

In s. ILHR 21.34 (1), delete the second “section” and substitute “s.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section ILHR 20.07 (40f) defines the term “high-flood-hazard zone” in terms of a “high-velocity wave runup.” Is the latter term sufficiently specific or is additional definition necessary?

b. In s. ILHR 21.33 (2) (c) 1. (intro.) and 2. (intro.), delete the last period and substitute a colon.

c. In s. ILHR 21.34, it appears that sub. (2) would be more clear and accurate if the provision began with the phrase “Except as provided in sub. (3), all.”

d. Section ILHR 21.34 (3) contains a lengthy run-on sentence that is difficult to read. It is suggested that sub. (3) be redrafted to contain at least two separate sentences.

e. The department should consider whether an applicability provision should be added to the rule. Such a provision would clearly inform the reader that subch. X of ch. ILHR 21 applies to all one- and two-family dwellings or applies to only those dwellings the construction of which has begun after a certain date or applies to some other formulation of one- and two-family dwellings.