



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 10-024

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 September 2008.]

1. Statutory Authority

General comment: The department is relying on s. 101.02 (1) and (15) (a) and (i), Stats., to provide statutory authority for this proposed rule. However, several of the provisions of the proposed rule conflict with statutory provisions in s. 101.123, Stats., as affected by 2009 Wisconsin Act 12. The rule should be reviewed for consistency with statutory law. An agency’s authority to promulgate administrative rules is conferred by statute, and rules must be consistent with the statutes, regardless of whether the rules are “similar to the publicized objectives” of the statutes (as stated in the analysis).

Specific comments: Specific areas of conflict between the proposed rules and the statutes are as follows:

a. The definition of “enclosed indoor area” in s. Comm 6.01 (2) conflicts with the statutory definition of “enclosed place” in s. 101.123(1) (ak), Stats. The effect of this discrepancy would be to prohibit smoking in different types of enclosed areas than prohibited by statute. These discrepancies should be reconciled so that the prohibitions in the proposed rule are consistent with the prohibitions in the law.

b. The definition of “place of employment” in s. Comm 6.01 (4) conflicts with the statutory definition of “place of employment” in s. 101.123 (1) (dj), Stats. The definition in s. Comm 6.01 (4) cross-references the statutory definition in s. 101.01 (11), Stats. However, the definition of “place of employment” in s. 101.123 (1) (dj) specifically notwithstanding the

definition in s. 101.01 (11), Stats. This discrepancy should be reconciled, so that the prohibitions in the proposed rule are consistent with the prohibitions in the law.

c. The definition of “public building” in s. Comm 6.01 (5) conflicts with the definition of “public place” in s. 101.123 (1) (eg), Stats. The statutory definition in s. 101.123 (1) (eg) does not include, for example, outdoor areas or places of ingress and egress; nor does it limit the law’s application to public places with three or more tenants. The discrepancy between the definition of “public buildings” in the proposed rule, and the definition of “public places” in the statute, should be reconciled so that smoking prohibitions are consistent with the statute.

d. The prohibitions in the proposed rule take effect on July 1, 2010; however, the changes to s. 101.123, Stats., take effect on July 5, 2010. This discrepancy should be reconciled.

2. Form, Style and Placement in Administrative Code

a. In item 2. of the analysis, “Statutes Interpreted:” should be replaced by “Statutory Authority.”

b. Since the proposed rule is creating a new chapter, a chapter title for proposed ch. Comm 6 should be created at the beginning of the rule.

c. The initial regulatory flexibility analysis and item 9. of the rule’s analysis should be reviewed for accuracy. It is possible that the rule will have different impacts on small businesses than the new statutory provisions in s. 101.123, Stats., because of the discrepancies between the proposed rule’s definitions and those in the law.