



**ARCHITECT SECTION
EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND PROFESSIONAL LAND
SURVEYORS**

Room N208, 4822 Madison Yards Way, Madison

Contact: Erin Karow 608-266-2112

November 30, 2018

The following agenda describes the issues that the Section plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions of the Section.

AGENDA

9:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

A. Adoption of Agenda (1-3)

B. Approval of Minutes of September 26, 2018 (4-7)

C. Administrative Matters

1. Department Updates
2. Staff Updates

D. Legislation and Rule Matters – Discussion and Consideration

1. Recommendations to the A-E Rules Committee for the Wisconsin Act 108 Report in Compliance with s. 227.29, Stats. **(8-15)**
2. Update on Legislation and Pending and Possible Rulemaking Projects

E. Speaking Engagement(s), Travel, or Public Relation Request(s)

1. Travel Report from the National Council of Architectural Registration Boards (NCARB) Leadership Summit on October 12-13, 2018 in St. Louis, Missouri

F. Deliberation on Items Added After Preparation of Agenda:

1. Introductions, Announcements and Recognition
2. Election of Officers
3. Appointment of Liaison(s) and Alternates
4. Delegation of Authorities
5. Administrative Matters
6. Education and Examination Matters
7. Credentialing Matters
8. Practice Matters
9. Legislative/Administrative Rule Matters

10. Liaison Reports
11. Board Liaison Training and Appointment of Mentors
12. Informational Items
13. Division of Legal Services and Compliance (DLSC) Matters
14. Presentations of Petitions for Summary Suspension
15. Petitions for Designation of Hearing Examiner
16. Presentation of Stipulations, Final Decisions and Orders
17. Presentation of Stipulations and Interim Orders
18. Presentation of Proposed Final Decision and Orders
19. Presentation of Interim Orders
20. Petitions for Re-Hearing
21. Petitions for Assessments
22. Petitions to Vacate Orders
23. Requests for Disciplinary Proceeding Presentations
24. Motions
25. Petitions
26. Appearances from Requests Received or Renewed
27. Speaking Engagement(s), Travel, or Public Relation Request(s)

G. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85 (1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.).

H. Deliberation on Division of Legal Services and Compliance (DLSC)

1. Stipulations, Final Decisions and Order

- a. 17 ARC 037 – Steven Sharpe **(16-22)**

I. Deliberation of Items Added After Preparation of the Agenda

1. Education and Examination Matters
2. Credentialing Matters
3. DLSC Matters
4. Monitoring Matters
5. Professional Assistance Procedure (PAP) Matters
6. Petitions for Summary Suspensions
7. Petitions for Designation of Hearing Examiner
8. Stipulations, Final Decisions and Order
9. Proposed Interim Orders
10. Administrative Warnings
11. Review of Administrative Warnings
12. Proposed Final Decision and Orders
13. Matters Relating to Costs/Orders Fixing Costs
14. Case Closings
15. Board Liaison Training
16. Petitions for Assessments and Evaluations

17. Petitions to Vacate Orders
18. Remedial Education Cases
19. Motions
20. Petitions for Re-Hearing
21. Appearances from Requests Received or Renewed

J. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

K. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

L. Open Session Items Noticed Above not Completed in the Initial Open Session

ADJOURNMENT

MEETINGS AND HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held at 4822 Madison Yards Way, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board's agenda, please call the listed contact person. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner for the convenience of the parties. Interpreters for the hearing impaired provided upon request by contacting the Affirmative Action Officer, 608-266-2112.

**ARCHITECT SECTION
EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS, AND PROFESSIONAL LAND
SURVEYORS
MEETING MINUTES
SEPTEMBER 26, 2018**

PRESENT: James Gersich, Steven Wagner, Matthew Wolfert

STAFF: Erin Karow, Executive Director; Kate Stolarzyk, Bureau Assistant;
and other department staff

CALL TO ORDER

Steven Wagner, Vice Chair, called the meeting to order at 9:03 a.m. A quorum of three (3) members was confirmed.

ADOPTION OF AGENDA

MOTION: Matthew Wolfert moved, seconded by James Gersich, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES OF APRIL 25, 2018

MOTION: Matthew Wolfert moved, seconded by James Gersich, to approve the minutes from April 25, 2018 as published. Motion carried unanimously.

LEGISLATION AND RULE MATTERS

A-E 3, Relating to Architect Experience, Review of Clearinghouse Comments and Recommendations

MOTION: James Gersich moved, seconded by Matthew Wolfert, to recommend the A-E Rules Committee accept all Clearinghouse comments for CR 18-029, A-E 3, relating to architectural experience. Motion carried unanimously.

SPEAKING ENGAGEMENT(S), TRAVEL, OR PUBLIC RELATION REQUEST(S)

MOTION: James Gersich moved, seconded by Matthew Wolfert, to designate the Chair and the Executive Director to attend the National Council of Architectural Registration Boards (NCARB) Leadership Summit on October 12-13, 2018 in St. Louis, Missouri and to authorize travel. Motion carried unanimously.

CLOSED SESSION

MOTION: Matthew Wolfert moved seconded by James Gersich, to convene to closed session to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85 (1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.). Steven Wagner read the language of the motion. The vote of each member was ascertained by voice vote. Roll Call Vote: James Gersich-yes, Steven Wagner-yes, Matthew Wolfert-yes. Motion carried unanimously.

The Section convened into Closed Session at 10:05 a.m.

RECONVENE TO OPEN SESSION

MOTION: Matthew Wolfert moved, seconded by James Gersich, to reconvene into Open Session. Motion carried unanimously.

The Section reconvened into Open Session at 10:51 a.m.

VOTING ON ITEMS CONSIDERED OR DELIBERATED IN CLOSED SESSION

MOTION: James Gersich moved, seconded by Matthew Wolfert, to reaffirm all votes made in Closed Session. Motion carried unanimously.

DELIBERATION ON DIVISION OF LEGAL SERVICES AND COMPLIANCE (DLSC) MATTERS

Administrative Warning(s)

17 ARC 028 – R.J.M.

MOTION: James Gersich moved, seconded by Matthew Wolfert, to issue an Administrative Warning in the matter of R.J.M., DLSC Case Number 17 ARC 028. Motion carried unanimously.

17 ARC 034 – L.L.R.

MOTION: James Gersich moved, seconded by Matthew Wolfert, to issue an Administrative Warning in the matter of L.L.R., DLSC Case Number 17 ARC 034. Motion carried unanimously.

18 ARC 001 – S.E.D.

MOTION: Matthew Wolfert moved, seconded by James Gersich, to delegate Al Rohmeyer, Department Chief Legal Counsel, the authority to preside over and resolve the Administrative Warning in the matter of S.E.D., DLSC Case Number 18 ARC 001. Motion carried unanimously.

Proposed Stipulations, Final Decisions and Orders

17 ARC 003 – Frederick D. Anderson

MOTION: James Gersich moved, seconded by Matthew Wolfert, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Frederick D. Anderson, DLSC Case Number 17 ARC 003. Motion carried unanimously.

17 ARC 008 – Michael Brush

MOTION: James Gersich moved, seconded by Matthew Wolfert, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Michael Brush, DLSC Case Number 17 ARC 008. Motion carried unanimously.

17 ARC 009 – Hui Chen

MOTION: James Gersich moved, seconded by Matthew Wolfert, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Hui Chen, DLSC Case Number 17 ARC 009. Motion carried unanimously.

17 ARC 020 – Stuart Hubler

MOTION: James Gersich moved, seconded by Matthew Wolfert, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Stuart Hubler, DLSC Case Number 17 ARC 020. Motion carried unanimously.

17 ARC 024 – Mary Marre

MOTION: James Gersich moved, seconded by Matthew Wolfert, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Mary Marre, DLSC Case Number 17 ARC 024. Motion carried unanimously.

17 ARC 027 – Thomas Miller

MOTION: James Gersich moved, seconded by Matthew Wolfert, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Thomas Miller, DLSC Case Number 17 ARC 027. Motion carried unanimously.

17 ARC 031 – Gregory Rewerts

MOTION: Matthew Wolfert moved, seconded by James Gersich, to delegate Al Rohmeyer, Department Chief Legal Counsel, the authority to preside over and resolve the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Gregory Rewerts, DLSC Case Number 17 ARC 031. Motion carried unanimously.

17 ARC 041 – Jon Talty

MOTION: James Gersich moved, seconded by Matthew Wolfert, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Jon Talty, DLSC Case Number 17 ARC 041. Motion carried unanimously.

17 ARC 043 – James Tschampl

MOTION: James Gersich moved, seconded by Matthew Wolfert, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against James Tschampl, DLSC Case Number 17 ARC 043. Motion carried unanimously.

17 ARC 044 – Gavin Tun

MOTION: James Gersich moved, seconded by Matthew Wolfert, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Gavin Tun, DLSC Case Number 17 ARC 044. Motion carried unanimously.

Case Closings

17 ARC 047 – B.W.

MOTION: James Gersich moved, seconded by Matthew Wolfert, to close DLSC Case Number 17 ARC 047, against B.W. for no violation. Motion carried unanimously.

ADJOURNMENT

MOTION: James Gersich moved, seconded by Matthew Wolfert, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 10:52 a.m.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Helen Leong, Administrative Rules Coordinator		2) Date When Request Submitted: November 19, 2018 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: Architect Section, Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors			
4) Meeting Date: November 30, 2018	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Legislative/Administrative Rule Matters – Discussion and Consideration 1) Recommendations to the A-E Rules Committee for the Act 108 Report, in compliance with s. 227.29, Stats. 2) Update on pending and possible rulemaking projects	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: A-E Chapters for all Sections: A-E 1 , A-E 2 , A-E 8 A-E Chapters for Architects: A-E 3 , A-E 12			
11) Authorization			
Signature of person making this request <i>Helen Leong</i>		Date <i>November 19, 2018</i>	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

(L) *Emergency rules.* If the committee suspends an emergency rule under this section, the agency may not submit to the legislature under s. 227.19 (2) the substance of the emergency rule as a proposed permanent rule during the time the emergency rule is suspended.

(3) **PUBLIC HEARINGS BY STATE AGENCIES.** By a majority vote of a quorum of the committee, the committee may require any agency to hold a public hearing in respect to recommendations made under sub. (2) and to report its action to the committee within the time specified by the committee. The agency shall publish a class 1 notice, under ch. 985, of the hearing in the official state newspaper and give any other notice which the committee directs. The hearing shall be conducted in accordance with s. 227.18 and shall be held not more than 60 days after receipt of notice of the requirement.

(4) **REPEAL OF UNAUTHORIZED RULES.** (a) In this subsection, “unauthorized rule” means a rule that an agency lacks the authority to promulgate due to the repeal or amendment of the law that previously authorized its promulgation.

(b) Notwithstanding ss. 227.114 to 227.117 and 227.135 to 227.19, an agency that promulgated or that otherwise administers a rule that the agency determines is an unauthorized rule shall petition the joint committee for review of administrative rules for authorization to repeal that rule by using the following process:

1. The agency shall submit a petition with a proposed rule that repeals the rule the agency has determined is an unauthorized rule to the legislative council staff for review. The proposed rule shall be in the form required under s. 227.14 (1) and shall include the material required under s. 227.14 (2) (a) 1., 2., and 7. and a statement that the agency is petitioning the joint committee for review of administrative rules to use the process under this subsection to repeal a rule the agency has determined to be an unauthorized rule. The agency shall also send an electronic copy of the petition and the proposed rule to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register.

2. The legislative council staff shall review the petition and proposed rule in accordance with s. 227.15 (2) and submit to the joint committee for review of administrative rules the petition and proposed rule with a written report including a statement of its determination as to whether the proposed rule proposes to repeal an unauthorized rule. The legislative council staff shall send the agency a copy of its report with an indication of the date on which the petition and proposed rule were submitted to the committee.

3. Following receipt of the petition and proposed rule submitted by the legislative council staff under subd. 2., the joint committee for review of administrative rules shall review the petition and proposed rule and may do any of the following:

- Approve the agency’s petition if the committee determines that the proposed rule would repeal an unauthorized rule.
- Deny the agency’s petition.
- Request that the agency make changes to the proposed rule and resubmit the petition and proposed rule under subd. 1.

4. The committee shall inform the agency in writing of its decision as to the petition.

(c) If the joint committee for review of administrative rules approves a petition to repeal an unauthorized rule as provided in par. (b) 3. a., the agency shall promulgate the proposed rule by filing a certified copy of the rule with the legislative reference bureau under s. 227.20, together with a copy of the committee’s decision.

History: 1985 a. 182 ss. 1, 3, 50; 1987 a. 186; 2005 a. 249; 2017 a. 108.

Rule suspension under sub. (2) (d) does not violate the separation of powers doctrine. *Martinez v. DILHR*, 165 Wis. 2d 687, 478 N.W.2d 582 (1992).

A collective bargaining agreement between the regents and the teaching assistants association is not subject to review by the committee. 59 Atty. Gen. 200.

In giving notice of public hearings held under sub. (2), the committee should concurrently employ the various forms of notice available that best fit the particular circumstances. 62 Atty. Gen. 299.

If an administrative rule is properly adopted and is within the power of the legislature to delegate there is no material difference between it and a law. No law, including

a valid rule can be revoked by a joint resolution of the legislature as such a resolution deprives the executive its power to veto an act of the legislature. 63 Atty. Gen. 159.

Legislative committee review of administrative rules in Wisconsin. Bunn and Gallagher. 1977 WLR 935.

227.265 Repeal or modification of rules. If a bill to repeal or modify a rule is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply. Instead, the legislative reference bureau shall publish the repeal or modification in the Wisconsin administrative code and register as required under s. 35.93, and the repeal or modification shall take effect as provided in s. 227.22.

History: 2013 a. 125, 136, 210, 277, 278, 295, 320, 332, 361, 363.

227.27 Construction of administrative rules. (1) In construing rules, ss. 990.001, 990.01, 990.03 (1), (2) and (4), 990.04 and 990.06 apply in the same manner in which they apply to statutes, except that ss. 990.001 and 990.01 do not apply if the construction would produce a result that is inconsistent with the manifest intent of the agency.

(2) The code shall be prima facie evidence in all courts and proceedings as provided by s. 889.01, but this does not preclude reference to or, in case of a discrepancy, control over a rule filed with the legislative reference bureau under s. 227.20 or modified under s. 227.265, and the certified copy of a rule shall also and in the same degree be prima facie evidence in all courts and proceedings.

History: 1983 a. 544; 1985 a. 182 ss. 22, 55 (2), (3); Stats. 1985 s. 227.27; 2005 a. 249; 2007 a. 20; 2013 a. 125, 136, 210, 277, 278, 295, 320, 332, 361, 363.

227.29 Agency review of rules and enactments. (1) By March 31 of each odd-numbered year, each agency with any rules published in the code shall submit a report to the joint committee for review of administrative rules listing all of the following rules promulgated or otherwise administered by that agency:

(a) Unauthorized rules, as defined in s. 227.26 (4) (a), together with a description of the legislation that eliminated the agency’s authority to promulgate any such rule.

(b) Rules for which the authority to promulgate has been restricted, together with a description of the legislation that restricted that authority.

(c) Rules that are obsolete or that have been rendered unnecessary, together with a description of why those rules are obsolete or have been rendered unnecessary.

(d) Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction, together with a citation to or the text of any such statute, regulation, or ruling.

(e) Rules that the agency determines are economically burdensome.

(2) The report under sub. (1) shall also include all of the following:

(a) A description of the agency’s actions, if any, to address each rule listed in the report. If the agency has not taken any action to address a rule listed in the report, the agency shall include an explanation for not taking action.

(b) A description of the status of each rule listed in the previous year’s report not otherwise listed.

(c) If the agency determines that there is no rule as described under sub. (1) (a), (b), (c), (d), or (e), a statement of that determination.

(3) If an agency identifies an unauthorized rule under sub. (1) (a) and is not otherwise in the process of promulgating a rule that repeals the unauthorized rule, the agency shall, within 30 days after the agency submits the report, submit a petition to the legislative council staff under s. 227.26 (4) (b) 1. to repeal the unauthorized rule if the agency has not previously done so.

(4) (a) In this subsection, “enactment” means an act or a portion of an act that is required to be published under s. 35.095 (3) (a).

(b) Each agency shall review enactments to determine whether any part of an enactment does any of the following:

1. Eliminates or restricts the agency's authority to promulgate any rules promulgated or otherwise administered by that agency.
2. Renders any rules promulgated or otherwise administered by that agency obsolete or unnecessary.
3. Renders, for any reason, any rules promulgated or otherwise administered by that agency not in conformity with or superseded by a state statute, including due to statutory numbering or terminology changes in the enactment.
4. Requires or otherwise necessitates rule making by the agency.

(c) If an agency determines that any consequence specified in par. (b) 1. to 4. results from an enactment or part of an enactment, within 6 months after the applicable effective date for the enactment or part of the enactment, the agency shall do one or more of the following, as applicable, to address the consequence identified by the agency and notify the joint committee for review of administrative rules of its action:

1. Submit a statement of the scope of a proposed rule under s. 227.135 (2), unless the enactment requires otherwise or unless the agency submits a notice to the committee explaining why it is unable to submit the statement of scope within that time period and an estimate of when the agency plans to submit the statement of scope.
2. In the case of an affected rule that the agency determines is an unauthorized rule, as defined in s. 227.26 (4) (a), submit a petition to the legislative council staff under s. 227.26 (4) (b) 1.
3. In the case of a consequence specified under par. (b) 3. that can be addressed by the legislative reference bureau using its authority under s. 13.92 (4) (b), submit a request to the legislative reference bureau to use that authority.

History: 2017 a. 108.

227.30 Review of administrative rules or guidelines.

(1) The small business regulatory review board may review the rules and guidelines of any agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1), to conduct their affairs. If the board determines that a rule or guideline places an unnecessary burden on the ability of a small business to conduct its affairs, the board shall submit a report and recommendations regarding the rule or guideline to the joint committee for review of administrative rules and to the agency.

(2) When reviewing the report, the joint committee for review of administrative rules shall consider all of the following:

- (a) The continued need for the rule or guideline.
- (b) The nature of the complaints and comments received from the public regarding the rule or guideline.
- (c) The complexity of the rule or guideline.
- (d) The extent to which the rule or guideline overlaps, duplicates, or conflicts with federal regulations, other state rules, or local ordinances.
- (e) The length of time since the rule or guideline has been evaluated.
- (f) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule or guideline since the rule or guideline was promulgated.

(3) The joint committee for review of administrative rules may refer the report regarding the rule or guideline to the presiding officer of each house of the legislature for referral to a committee under s. 227.19 (2) or may review the rule or guideline as provided under s. 227.26.

History: 2003 a. 145; 2005 a. 249.

SUBCHAPTER III

ADMINISTRATIVE ACTIONS AND JUDICIAL REVIEW

Cross-reference: See also ch. NR 2, Wis. adm. code.

227.40 Declaratory judgment proceedings. (1) Except as provided in sub. (2), the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of the rule brought in the circuit court for the county where the party asserting the invalidity of the rule resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for the county where the dispute arose. The officer or other agency whose rule is involved shall be the party defendant. The summons in the action shall be served as provided in s. 801.11 (3) and by delivering a copy to that officer or, if the agency is composed of more than one person, to the secretary or clerk of the agency or to any member of the agency. The court shall render a declaratory judgment in the action only when it appears from the complaint and the supporting evidence that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the agency to pass upon the validity of the rule in question.

(2) The validity of a rule may be determined in any of the following judicial proceedings when material therein:

(a) Any civil proceeding by the state or any officer or agency thereof to enforce a statute or to recover thereunder, provided such proceeding is not based upon a matter as to which the opposing party is accorded an administrative review or a judicial review by other provisions of the statutes and such opposing party has failed to exercise such right to review so accorded.

(b) Criminal prosecutions.

(c) Proceedings or prosecutions for violations of county or municipal ordinances.

(d) Habeas corpus proceedings relating to criminal prosecution.

(e) Proceedings under s. 66.191, 1981 stats., or s. 40.65 (2), 106.50, 106.52, 303.07 (7) or 303.21 or ss. 227.52 to 227.58 or under ch. 102, 108 or 949 for review of decisions and orders of administrative agencies if the validity of the rule involved was duly challenged in the proceeding before the agency in which the order or decision sought to be reviewed was made or entered.

(f) Proceedings under s. 227.114 (6m).

(3) In any judicial proceeding other than one set out above, in which the invalidity of a rule is material to the cause of action or any defense thereto, the assertion of such invalidity shall be set forth in the pleading of the party so maintaining the invalidity of such rule in that proceeding. The party so asserting the invalidity of such rule shall, within 30 days after the service of the pleading in which the party sets forth such invalidity, apply to the court in which such proceedings are had for an order suspending the trial of said proceeding until after a determination of the validity of said rule in an action for declaratory judgment under sub. (1) hereof.

(a) Upon the hearing of such application if the court is satisfied that the validity of such rule is material to the issues of the case, an order shall be entered staying the trial of said proceeding until the rendition of a final declaratory judgment in proceedings to be instituted forthwith by the party asserting the invalidity of such rule. If the court shall find that the asserted invalidity of a rule is not material to the case, an order shall be entered denying the application for stay.

(b) Upon the entry of a final order in said declaratory judgment action, it shall be the duty of the party who asserts the invalidity

A-E Chapter	Most Recent Project Status	s. 227.29 , Stats., Review	Section Notes / Comments
A-E 1 , relating to Authority	Open Project: Final rule and legislative report submitted to Governor’s Office.		Changing “shall” to “may” to provide more flexibility to the A-E Board in updating administrative rules.
A-E 2 , relating to General Requirements and Procedures	Last updated: CR 15-036 , effective January 2016, updated the rules in accordance with 2013 Act 358, Land Surveyor to a license and updated the title to “Professional Land Surveyor.”		Jim Gersich: <ul style="list-style-type: none"> • A-E 2.03 (1) (a) “Firm” should include Limited Liability Companies (LLC) (See s. 443.08, Stats.) LLPs should be covered under s. 178.0102 (11), Stats. • A-E 2.03 (3) ‘Notice’ need more clarification on how to comply. • A-E 2.05: Should 5 years be the rule since have 2 year renewal cycles?
A-E 3 , relating to Architect Registration	Open Project: Final rule and legislative report submitted to Governor’s Office.	1) CR 18-029: s. 227.29 (1) (c) obsolete rule due to change in program’s name by NCARB. 2) A-E 3.05 (8): s. 227.29 (1) (a) unauthorized due to 2009 Act 350.	Updating the name of the Intern Architect Development Program with the new name provided by the National Council of Architectural Registration Boards. A-E 3.05 (8), references repealed s. 443.09 (6) , Stats.
A-E 4 , relating to Professional Engineer Registration	Open Project: Preliminary rule draft being considered by the Section at the next meeting		Reviewing chapter A-E 4 to ensure that applicants can effectively use NCEES’ tools to apply, and that the chapter is

A-E Chapter	Most Recent Project Status	s. 227.29 , Stats., Review	Section Notes / Comments
	scheduled for December 11, 2018.		up to date with current practices
A-E 5 , relating to Designer Permit	Pending Project: Scope Statement pending Governor approval	A-E 5.04 (8) (a): s. 227.29 (1) (a) unauthorized due to 2009 Act 350	Section review of the chapter to ensure it is up to date and accurate with Section review of applications
A-E 6 , relating to Professional Land Surveyor Licensure	Pending Project: Scope Statement pending Governor approval		Section review of the chapter to ensure it is up to date and accurate with Section review of applications
A-E 7 , relating to Minimum Standards for Property Surveys	Open Project: Proposed revisions being considered by the Section at the next meeting scheduled for January 10, 2018.		Section review of the chapter to ensure it is up to date and accurate with current practice and licensee recommendations.
A-E 8 , relating to Professional Conduct	Last updated: CR 15-036 , effective January 2016, updated the rules in accordance with 2013 Act 358, Land Surveyor to a license and updated the title to “Professional Land Surveyor.”		Jim Gersich: <ul style="list-style-type: none"> • A-E 8.04 (5) ‘association’ may need to be defined.
A-E 9 , relating to Landscape Architect Registration	Pending Project: Scope Statement pending approval with the Governor’s Office		Update to ensure compliance with 2017 Act 278
A-E 10, 11, 12, and 13, relating to Continuing Education	Open Project: Unauthorized Rule Repeal Petition approved by the JCRAR on June 7, 2018, adoption order pending	227.29 (1) (a) unauthorized rule due to 2017 Act 59, s. 1929, to conduct random audits.	Agency’s authority to conduct random audits for CE compliance was removed,

A-E Chapter	Most Recent Project Status	s. 227.29 , Stats., Review	Section Notes / Comments
	approval by the A-E Board, November 30, 2018 meeting		repealing sections that speak to random audit authority.
A-E 10 , relating to Continuing Education for Professional Land Surveyors	Last updated: CR 15-036 , effective January 2016, updated the rules in accordance with 2013 Act 358, Land Surveyor to a license and updated the title to “Professional Land Surveyor.”		
A-E 11 , relating to Continuing Education for Landscape Architects	No updates since implemented, CR 09-081 , effective July 2010.		
A-E 12 , relating to Continuing Education for Architects	No updates since implemented, CR 09-080 , effective July 2010.		Jim Gersich: <ul style="list-style-type: none"> • A-E 12.03 (2) (d) ‘at least one contact hour’ may be inconsistent with new approaches to CE delivery (see full comments below).
A-E 13 , relating to Continuing Education for Professional Engineers	Last updated: CR 17-060 effective June 2018, updated CE providers to make it easier for licensees to take approved programs.		

Jim Gersich Full Comments:

I have reviewed Rules A-E 2, 3, 8 & 12 as requested. Here are my comments. Thx -AJ 10.3.2018

1. A-E 2.03 (1) (a) “Firm”. It is my experience that most AE and EA firms being organized nowadays are Limited Liability Companies (LLC) or Limited Liability Partnerships (LLP) and the definition is silent on these. Might be useful to add them to the Rule.

2. A-E 2.03 (3) “Notice”. At least one resident in charge...notify the department. I am unclear “how” you go about doing this notification...is there a form you fill out, or something similar? (Probably it already exists and I’m just not aware of it.)
3. A-E 2.05 “5 years.” Given our 2-year renewal cycle and continuing ed requirements, this may be worthwhile for discussion. Is the 5-year window still salient?
4. A-E 8.04 (5) “association”. How exactly is an “association” defined? DFD has a definition but it may not be in concert with the intention of this Rule.
5. A-E 12.03 (2) (d) “at least one contact hour.” I am the 2018 chair of the AIA’s Continuing Education Committee. We promulgate the ‘rules’ related to providers, transcripts etc etc. Throughout 2018 we have been updating the “Standards” i.e. the AIA Standards for Continuing Education Programs, which gives Registered Providers of the education the guidance they need to conform, meet HSW, etc etc. The updated Standards are about ready to roll-out. One fairly substantial change is the move to “nano” learning. This means learning in an amount of direct contact not less than 15 minutes, and between 15-45 minutes of contact. This allows for example three 20-minute sessions to qualify as 1 LU. If all three qualify as HSW content, then you get 1 credit LU/HSW. Here is the current language (notice the disclaimer in yellow):

Standard 11. Nano learning programs

Nano learning programs are designed to permit a participant to learn a given subject in 15-45 minutes. Nano learning programs differ from traditional live and online programs in that they are typically more narrowly focused on topic. Nano learning programs must use instructional methods that clearly define learning objectives, guide the learner through a program of learning, and provide evidence of a learner’s satisfactory completion of the program. Nano learning programs may be delivered live in-person, live online, or as on-demand e-learning. Note that Nano learning programs carry less than one (1) LU each. **Some jurisdictions may not accept Nano learning programs for compliance with mandatory continuing education requirements for license/registration renewal.**

S11-01. Learner guidance

Nano learning programs must use instructional methods that clearly define a minimum of one (1) learning objective, guide the participant through a program of learning, and provide evidence of a learner’s satisfactory completion of the program.

S11-02. Summative assessment requirement

On-demand Nano learning programs must require learners to successfully complete a summative assessment with a passing grade of 100 percent before issuing LUs for successful completion of the course. At least three (3) questions must be included on the summative assessment. The summative assessment grade may be reported with the attendance record. Nano learning programs delivered live in-person or online do not require a summative assessment.

S11-03. Based on materials developed for instructional use

Nano learning programs must be based on materials specifically developed for instructional use and not on third-party materials. Nano learning programs requiring only the reading of general professional literature, laws or statutes, building codes, or reference manuals followed by a test are not acceptable.

Acceptable instructional materials for a Nano learning activity include intentional, engaged learning activities developed for focused content delivery. Nano learning programs may incorporate techniques such as visuals, slide reinforcements, role play, demonstrations, or use of a white board. The intent of a Nano learning program is to transfer knowledge that is interactive—seeking to teach by example—to supply information to understand a specific concept, complete a certain task or computation, or to problem-solve or make decisions through role play or demonstration. At a minimum, Nano learning programs must include the following items:

- The learning objective of the program
- Any instructions that learners need to navigate through the program
- A summative assessment (for on-demand programs)