## 2013 Assembly Bill 730 (LRB -4032)

An Act to amend 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 35.93 (2) (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e) (intro.), 35.93 (3) (e) 1., 227.01 (13) (intro.), 227.11 (2) (intro.) and 227.27 (2); and to create 13.92 (4) (bm) and 227.265 of the statutes; relating to: rule-making procedures and modifying and repealing various rules promulgated by the Department of Natural Resources.

**2014**

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|---|---|---|---|
| 02-05. | A. | Introduced by Representatives **Genrich, Swearingen, Bewley, Hulsey, Kahl, Kleefisch, Knodl, Krug, Mason, Milroy, Murtha, Ohnstad, Bernard Schaber, Thiesfeldt, Wright** and **Zamarripa**; cosponsored by Senators **Gudex, Hansen, Lehman, Shilling** and **L. Taylor**. | 581 |
| 02-05. | A. | Read first time and referred to Committee on Natural Resources and Sporting Heritage | 581 |
| 02-12. | A. | Public hearing held | |
| 02-27. | A. | Executive action taken | |
| 03-07. | A. | Report passage recommended by Committee on Natural Resources and Sporting Heritage, Ayes 13, Noes 0 | 729 |
| 03-07. | A. | Referred to Committee on Rules | 729 |
| 03-12. | A. | Placed on calendar 3-18-2014 by Committee on Rules | |
| 03-18. | A. | Read a second time | 768 |
| 03-18. | A. | Ordered to a third reading | 769 |
| 03-18. | A. | Rules suspended | 769 |
| 03-18. | A. | Read a third time and **passed** | 769 |
| 03-18. | A. | Representatives Shankland and Barca added as coauthors | 769 |
| 03-18. | A. | Ordered immediately messaged | 769 |
| 03-19. | S. | Received from Assembly | 799 |
| 03-19. | S. | Read first time and referred to committee on Senate Organization | 800 |
| 03-19. | S. | Available for scheduling | |
| 03-31. | S. | Public hearing requirement waived by committee on Senate Organization, pursuant to Senate Rule 18 (1m), Ayes 5, Noes 0 | 821 |
| 03-31. | S. | Placed on calendar 4-1-2014 pursuant to Senate Rule 18(1) | 822 |
| 04-01. | S. | Read a second time | |
| 04-01. | S. | Ordered to a third reading | |
| 04-01. | S. | Rules suspended | |
| 04-01. | S. | Read a third time and **concurred in** | |
| 04-01. | S. | Ordered immediately messaged | |
| 04-02. | A. | Received from Senate concurred in | 818 |



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# 2013
# ENROLLED BILL

**13en** A **B-** 730

**ADOPTED DOCUMENTS:**

☒ **Orig** ☐ **Engr** ___ **SubAmdt** ___ **13** - 4032/1

**Amendments to above (if none, write "NONE"):** None

**Corrections – show date (if none, write "NONE"):** None

**Topic** Rel

4-3-14
**Date**

**Enrolling Drafter**

State of Wisconsin
2013 - 2014 LEGISLATURE

LRB-4032/1
EHS:sac:rs

# 2013 ASSEMBLY BILL 730

February 5, 2014 - Introduced by Representatives GENRICH, SWEARINGEN, BEWLEY, HULSEY, KAHL, KLEEFISCH, KNODL, KRUG, MASON, MILROY, MURTHA, OHNSTAD, BERNARD SCHABER, THIESFELDT, WRIGHT and ZAMARRIPA, cosponsored by Senators GUDEX, HANSEN, LEHMAN, SHILLING and L. TAYLOR. Referred to Committee on Natural Resources and Sporting Heritage.

AN ACT ***to amend*** 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 35.93 (2) (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e) (intro.), 35.93 (3) (e) 1., 227.01 (13) (intro.), 227.11 (2) (intro.) and 227.27 (2); and ***to create*** 13.92 (4) (bm) and 227.265 of the statutes; **relating to:** rule-making procedures and modifying and repealing various rules promulgated by the Department of Natural Resources.

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## *Analysis by the Legislative Reference Bureau*

### *Rule-making procedures*

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.

2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.

3. Subject to certain exceptions, a public hearing is held on the proposed rule.

4. The final draft of the proposed rule is submitted to the governor for approval.

5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule–making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

***Closing hours***

Under current law, the Department of Natural Resources (DNR) designates a system of state trails as part of the state park system. Under DNR's current rules, with certain exceptions, no person may enter or be within the boundaries of any state park between the hours of 11:00 p.m. and the following 6:00 a.m. The bill amends DNR rules to exempt users of state trails from these nighttime closing hours, but allows DNR discretion to close a state trail or portion of a state trail at night by posting notice of closing hours.

Current law requires, with certain exceptions, that state parks be open to hunting, fishing, and trapping by persons who hold the appropriate hunting, fishing, or trapping license, permit, or other approval. Under current DNR rules, one exception to state park closing hours is for hunters who enter the land no earlier than one hour before the opening of hunting hours on that land. This bill amends DNR rules to add a similar exception for trappers entering land no earlier than one hour prior to the opening of trapping hours on the land. If there are no established hunting hours on the land, the bill amends DNR rules to allow hunters to enter no earlier than one hour prior to sunrise.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1 **SECTION 1.** 13.92 (4) (bm) of the statutes is created to read:

2 13.92 **(4)** (bm) If 2 or more rules filed under s. 227.20 or modified under s.
3 227.265 affect the same unit of the Wisconsin administrative code without taking
4 cognizance of the effect thereon of the other rules and if the legislative reference
5 bureau finds that there is no mutual inconsistency in the changes made by each such
6 rule, the legislative reference bureau shall incorporate the changes made by each

rule into the text of the unit and document the incorporation in a note to the unit. For each such incorporation, the legislative reference bureau shall include in a correction bill a provision formally validating the incorporation. Section 227.27 (2) is not affected by printing decisions made by the legislative reference bureau under this paragraph.

**SECTION 2.** 13.92 (4) (c) of the statutes is amended to read:

13.92 **(4)** (c) The legislative reference bureau may insert in the Wisconsin administrative code a note explaining any change made under par. (b) <u>or (bm)</u>.

**SECTION 3.** 13.92 (4) (d) of the statutes is amended to read:

13.92 **(4)** (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not apply to any change made by the legislative reference bureau under par. (b) <u>or (bm)</u>.

**SECTION 4.** 13.92 (4) (e) of the statutes is amended to read:

13.92 **(4)** (e) The legislative reference bureau shall prepare and keep on file a record of each change made under par. (b) <u>or (bm)</u>.

**SECTION 5.** 13.92 (4) (f) of the statutes is amended to read:

13.92 **(4)** (f) The legislative reference bureau shall notify the agency involved of each change made under par. (b) <u>or (bm)</u>.

**SECTION 6.** 35.93 (2) (b) 4. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(2)** (b) 4. Copies of all rules filed with the legislative reference bureau under s. 227.20 (1) <u>or modified under s. 227.265</u> since the compilation of the preceding register, including emergency rules filed under s. 227.24 (3).

**SECTION 7.** 35.93 (2) (c) 1. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(2)** (c) 1. Each chapter of the Wisconsin administrative code that has been affected by rules filed with legislative reference bureau under s. 227.20 (1) <u>or modified under s. 227.265</u>, in accordance with sub. (3) (e) 1.

**SECTION 8.** 35.93 (3) of the statutes is amended to read:

35.93 **(3)** The legislative reference bureau shall compile and deliver to the department for printing copy for a register which shall contain all the rules filed <u>under s. 227.20 or modified under s. 227.265</u> since the compilation of rules for the preceding issue of the register was made and those executive orders which are to be in effect for more than 90 days or an informative summary thereof. The complete register shall be compiled and published before the first day of each month and a notice section of the register shall be compiled and published before the 15th day of each month. Each issue of the register shall contain a title page with the name "Wisconsin administrative register", the number and date of the register, and a table of contents. Each page of the register shall also contain the date and number of the register of which it is a part in addition to the other necessary code titles and page numbers. The legislative reference bureau may include in the register such instructions or information as in the bureau's judgment will help the user to correctly make insertions and deletions in the code and to keep the code current.

**SECTION 9.** 35.93 (3) (e) (intro.) of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(3)** (e) (intro.) The legislative reference bureau shall incorporate into the appropriate chapters of the Wisconsin administrative code each permanent rule filed with the legislative reference bureau under s. 227.20 (1) <u>or modified under s. 227.265</u> and, for each chapter of the administrative code affected by a rule, do all of the following:

1 **SECTION 10.** 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act
2 20, is amended to read:

3 35.93 **(3)** (e) 1. Publish the chapter in the appropriate end–of–month register
4 in accordance with the filing deadline for publication established in the rules
5 procedures manual published under s. 227.15 (7) ~~or~~, in an end–of–month register
6 agreed to by the submitting agency and the legislative reference bureau, or, in the
7 case of a rule modified under s. 227.265, in the end–of–month register for the month
8 in which the bill modifying the rule is enacted.

9 **SECTION 11.** 227.01 (13) (intro.) of the statutes is amended to read:

10 227.01 **(13)** (intro.) "Rule" means a regulation, standard, statement of policy,
11 or general order of general application which has the effect of law and which is issued
12 by an agency to implement, interpret, or make specific legislation enforced or
13 administered by the agency or to govern the organization or procedure of the agency.
14 "Rule" includes a modification of a rule under s. 227.265. "Rule" does not include, and
15 s. 227.10 does not apply to, any action or inaction of an agency, whether it would
16 otherwise meet the definition under this subsection, which:

17 **SECTION 12.** 227.11 (2) (intro.) of the statutes is amended to read:

18 227.11 **(2)** (intro.) Rule–making authority is expressly conferred on an agency
19 as follows:

20 **SECTION 13.** 227.265 of the statutes is created to read:

21 **227.265 Repeal or modification of rules.** If a bill to repeal or modify a rule
22 is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply.
23 Instead, the legislative reference bureau shall publish the repeal or modification in
24 the Wisconsin administrative code and register as required under s. 35.93, and the
25 repeal or modification shall take effect as provided in s. 227.22.

**SECTION 14.** 227.27 (2) of the statutes is amended to read:

227.27 **(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 ~~or the secretary of state~~ 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.

**SECTION 15.** NR 45.04 (2) (a) 2. of the administrative code is amended to read:

NR 45.04 (2) (a) 2. Hunters or trappers entering department lands ~~with established~~ during an open hunting ~~seasons~~ or trapping season on the land, provided the entry is no earlier than one hour prior to the opening of hunting or trapping hours established in ~~s. NR 10.24~~ ch. NR 10. If the department has not established hunting hours on the land, hunters may enter the land no earlier than one hour prior to sunrise.

**SECTION 16.** NR 45.04 (2) (a) 3. of the administrative code is repealed.

**SECTION 17.** NR 45.04 (2) (a) 5. of the administrative code is created to read:

NR 45.04 (2) (a) 5. Users of state trails, except during hours of closure as posted by the department or by an entity operating a state trail under a written agreement with the department.

**SECTION 18. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of section 35.93 (2) (b) 4. and (c) 1. and (3) (e) (intro.) and 1. of the statutes takes effect on January 1, 2015.

**(END)**