



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2015 Assembly Bill 251	Assembly Amendments 2, 3, 4, 5, 7, 8, and 9
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2015 ASSEMBLY BILL 251

2015 Assembly Bill 251 modifies various authorities and procedures relating to the promulgation of administrative rules. Among other changes, the bill: creates a new preliminary hearing requirement; creates new roles for the Office of Business Development (OBD) and the Department of Revenue (DOR); authorizes the preparation of independent economic impact analyses; and requires agencies to stop work on proposed rules if an economic impact analysis estimates that \$10 million or more in implementation and compliance costs are reasonably expected to be incurred or passed to businesses, local governmental units, and individuals over any two-year period as a result of the proposed rule.

ASSEMBLY AMENDMENT 2

As introduced, all provisions of **the bill** would take effect on the day after the enacted legislation is published. **Assembly Amendment 2** delays the effective date of the bill until January 1, 2017.

ASSEMBLY AMENDMENT 3

The bill creates a new role for the Secretary of Revenue. Under the bill, the Secretary of Revenue receives certain reports of administrative rule promulgations and is authorized (and, except with respect to independent economic impact analyses, required) to do all of the following:

- Review and approve each initial economic impact analysis, and recommend modifications and direct the agency to make modifications to that analysis.
- Request an independent economic impact analysis for a proposed rule.

- Provide training to agencies on appropriate data collection and methods of analysis for purposes of preparing economic impact analyses.
- Attend JCRAR hearings and present testimony on proposed rules that are estimated to have an economic impact.

Assembly Amendment 3 removes the responsibilities given to the Secretary of Revenue under the bill and gives those responsibilities to the Secretary of Administration instead.

ASSEMBLY AMENDMENT 4

The bill requires proposed administrative rules to be submitted to the Small Business Regulatory Review Board (SBRRB) for analysis if the OBD determines that a rule will have an economic impact on small businesses.

Assembly Amendment 4 also authorizes the SBRRB to conduct such analyses on its own initiative.

ASSEMBLY AMENDMENT 5

Assembly Amendment 5 makes three changes to the bill, as described below.

Payment for Independent Economic Impact Analysis

The bill authorizes the Secretary of Revenue, the Joint Committee for Review of Administrative Rules (JCRAR), or either co-chair of JCRAR to request an independent economic impact analysis to be prepared for a proposed rule. The bill directs the Department of Administration (DOA) (if the Secretary of Revenue makes the request) or JCRAR or a JCRAR co-chair (if the committee or a co-chair is the requestor) to negotiate a contract for preparation of the independent analysis. The person chosen to conduct the independent analysis must not be a state agency.

If the request is made by the Secretary of Revenue, the bill requires an independent analysis to be paid for by the agency promulgating the rule. If the request is made by JCRAR or a JCRAR co-chair, then the bill requires the independent analysis to be paid for from the Assembly's and Senate's general operations appropriations.

Assembly Amendment 5 requires all economic development analyses prepared under the bill, including analyses requested by JCRAR or a JCRAR co-chair, to be paid for by the agency whose rule promulgation is the subject of the analysis.

Procedure for Gubernatorial Approval of Germaine Modifications

The bill requires agencies to submit germane modifications to proposed rules to the Governor for approval. Under the bill, if the Governor does not approve a modification, the agency may not promulgate the proposed rule, unless the agency does so without the modification.

Assembly Amendment 5 modifies the procedure for gubernatorial approval of germane modifications to rule promulgations. Specifically, the amendment makes such changes subject to a 10-day passive review by the Governor rather than requiring affirmative approval by the Governor. The amendment also requires the Governor to provide an agency with a written notice in the event that a proposed modification is not approved.

JCRAR Authority to Extend Emergency Rules

The bill modifies JCRAR's authority to extend the time period during which an emergency rule is in effect. Under the bill, JCRAR may not grant more than one extension for an emergency rule before the Legislature's final general-business floorperiod, and such extensions must not exceed 120 days.

Assembly Amendment 5 allows JCRAR to extend the effective period of an emergency rule multiple times before the Legislature's final general-business floorperiod, but it retains the 120 day total time limitation for such extensions.

ASSEMBLY AMENDMENT 7

Assembly Amendment 7 adds the provisions of 2015 Assembly Bill 80 to the bill. Assembly Bill 80 relates to the review of administrative rules and was passed by the Assembly on March 17, 2015.

ASSEMBLY AMENDMENT 8

The bill requires an agency to stop work on a proposed rule in the event that an economic impact analysis (either agency-prepared or independent) estimates that \$10 million or more in implementation and compliance costs are reasonably expected to be incurred or passed to businesses, local governmental units, and individuals over any two-year period as a result of the proposed rule. After such a finding, the bill requires an agency to take one of the following actions:

- Submit a request to JCRAR for the committee to introduce legislation to authorize promulgation of the rule.
- Modify the proposed rule to lower the expected implementation and compliance costs to below \$10 million, if the modifications are germane to the subject matter of the proposed rule.
- Withdraw the rule.

If an agency chooses the first of the above options, the bill authorizes JCRAR, in its discretion, to introduce a bill authorizing promulgation of the proposed rule. If JCRAR chooses not to do so, then the agency may not continue the rule promulgation unless it modifies the rule to reduce the estimated implementation and compliance costs.

Assembly Amendment 8 exempts certain types of rules promulgated by the Department of Natural Resources (DNR) from those requirements. Specifically, under the amendment, the requirements do not apply to a proposed DNR rule relating to air quality, if all of the following apply:

- The rule is necessary to comply with an explicit call for a state implementation plan by the U.S. Environmental Protection Agency under specified provisions of the federal Clean Air Act.
- Any standard, requirement, or limitation proposed in the rule is consistent with and no more stringent than federal law and requirements.
- The rule proposes to regulate only those emissions or substances explicitly required to be regulated under a state implementation plan under the Clean Air Act.

If the DNR believes that a proposed rule meets those criteria, the amendment requires the department to include a statement to that effect in any economic impact analysis prepared for the proposed rule.

ASSEMBLY AMENDMENT 9

The bill creates several new requirements and procedures, some of which are described above, applicable to rule promulgations.

Assembly Amendment 9 exempts rules promulgated by the state's Commissioner of Insurance from the various procedural steps and requirements created under the bill.

BILL HISTORY

Representative Neylon offered Assembly Amendments 2, 3, and 4 on January 15, 2016, January 29, 2016, and February 1, 2016, respectively. On February 3, 2016, the Assembly Committee on State Affairs and Government Operations voted to recommend the adoption of Assembly Amendments 3 and 4 on votes of Ayes, 10; Noes, 5, and it voted to recommend the adoption of Assembly Amendment 2 on a vote of Ayes, 11; Noes, 4. On the same day, the committee voted to recommend passage of the bill, as amended, on a vote of Ayes, 10; Noes, 5.

Representative Ballweg offered Assembly Amendments 5 and 7 on February 17, 2015. Representative Rodriguez offered Assembly Amendments 8 and 9 on February 18, 2015.

On February 18, 2015, the Assembly adopted Assembly Amendments 2, 3, 4, 5, 7, 8, and 9 on voice votes. On the same day, the Assembly passed the bill, as amended, on a vote of Ayes, 60; Noes, 33.

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