

Fiscal Estimate - 2017 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 17-3287/1	Introduction Number SB-322
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Description
 review by state agencies of administrative rules and enactments; an expedited process for repealing rules an agency no longer has the authority to promulgate; retrospective economic impact analyses for rules; and reporting by the Legislative Reference Bureau on rules in need of revision

Fiscal Effect

State:

- No State Fiscal Effect
- Indeterminate
 - Increase Existing Appropriations
 - Decrease Existing Appropriations
 - Create New Appropriations
 - Increase Existing Revenues
 - Decrease Existing Revenues
 - Increase Costs - May be possible to absorb within agency's budget
 - Yes
 - No
 - Decrease Costs

Local:

- No Local Government Costs
- Indeterminate
 - 1. Increase Costs 3. Increase Revenue
 - Permissive Mandatory Permissive Mandatory
 - 2. Decrease Costs 4. Decrease Revenue
 - Permissive Mandatory Permissive Mandatory
- 5. Types of Local Government Units Affected
 - Towns Village Cities
 - Counties Others
 - School Districts WTCS Districts

Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	Affected Ch. 20 Appropriations
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Fiscal Estimate Narratives

DOC 6/26/2017

LRB Number	17-3287/1	Introduction Number	SB-322	Estimate Type	Original
Description review by state agencies of administrative rules and enactments; an expedited process for repealing rules an agency no longer has the authority to promulgate; retrospective economic impact analyses for rules; and reporting by the Legislative Reference Bureau on rules in need of revision					

Assumptions Used in Arriving at Fiscal Estimate

Current law sets forth the procedure for promulgating administrative 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 must be approved by the governor and the agency head 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 the 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 (JCRAR). 6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Register, and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication of the revised chapters of the Wisconsin Administrative Code (code).

This bill provides for an alternate, expedited procedure an agency can use to repeal a rule that the agency determines it no longer has the authority to promulgate because of the repeal or amendment of the law that previously authorized its promulgation (unauthorized rule). Under the bill, an agency, instead of using the procedure described above, may promulgate a rule that repeals an unauthorized rule using the following procedure:

1. The agency submits a petition with a proposed rule that repeals a rule the agency has determined is an unauthorized rule to the Legislative Council Staff for review, along with certain information and a statement that the agency is petitioning JCRAR to use the expedited procedure to repeal a rule the agency has determined to be an unauthorized rule.
2. The Legislative Council Staff reviews the petition and proposed rule and submits to JCRAR the petition and proposed rule with a written report that includes a statement of the Legislative Council Staff's determination of whether the proposed rule proposes to repeal an unauthorized rule.
3. Following receipt of the petition and proposed rule submitted by the Legislative Council Staff, JCRAR reviews the petition and proposed rule and may 1) approve the agency's petition if JCRAR determines that the proposed rule would repeal an unauthorized rule; 2) deny the petition; or 3) request that the agency make changes to the proposed rule and resubmit the petition and proposed rule as described above. If JCRAR approves the petition, the agency must promulgate the proposed rule to repeal the unauthorized rule by filing a certified copy of the rule with the LRB, together with a copy of JCRAR's decision.

The bill requires each agency with any rules published in the code to biennially submit a report to JCRAR listing all of the following rules promulgated or otherwise administered by that agency:

1. Unauthorized rules.
2. Rules for which the authority to promulgate has been restricted.
3. Rules that are obsolete or that have been rendered unnecessary.
4. Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a court ruling.
5. Economically burdensome rules.

The report must also include 1) a description of the agency's actions, if any, to address each rule listed in the report and, if the agency has not taken any action to address a rule listed in the report, an explanation for not taking action; 2) a description of the status of each rule listed in the previous year's report not otherwise listed; and 3) if the agency determines that there are no such rules to list, a statement of that determination.

If an agency identifies an unauthorized rule in the report, the bill requires the agency to submit a petition to

repeal the unauthorized rule, using the process described above, within 30 days after the report. The bill requires agencies to review enactments of the legislature (acts) to determine whether any part of an act results in any of the following consequences:

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

If an agency determines that any such consequence results from an act, within six months after the act's effective date, the agency must do one or more of the following, as applicable, to address any consequence identified by the agency:

1. Submit a statement of the scope of a proposed rule to address any such consequence to the governor, unless the act requires otherwise or unless the agency submits a notice to JCRAR 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. Submit a petition to use the expedited procedure described above for repealing an unauthorized rule to the Legislative Council Staff.
3. Submit a request to the LRB for the LRB to use its revision authority to make certain changes to the code.

The bill requires the LRB to biennially report to JCRAR regarding rules in the code that the LRB has identified as possibly being in need of revision. The bill allows JCRAR to direct an agency to prepare a retrospective economic impact analysis for any of an agency's rules that are published in the code. JCRAR may identify one or more specific chapters, sections, or other subunits in the code that are administered by the agency as the rules that are to be the subject of the analysis and may specify a deadline for the preparation of the analysis. An agency must include in a retrospective economic impact analysis a comparison of the actual economic effect of the rules to any economic impact analysis that analyzed the economic effect of the rules when they were proposed. The bill otherwise requires an agency to prepare a retrospective economic impact analysis in a manner similar to that prescribed for an economic impact analysis for a proposed rule.

This bill makes several changes to the administrative rule-making process. Some changes may result in increased workload for the Department's Administrative Rules Committee. For example, the bill requires that the Department of Corrections (DOC) submit a report including rules for which the authority to promulgate has been restricted, and rules that are obsolete or that have been rendered unnecessary. The bill also allows JCRAR to direct an agency to prepare a retrospective economic impact analysis for any of an agency's rules that are published in the code.

The DOC Administrative Rules Committee is comprised of agency staff in various divisions and bureaus. Committee Members are appointed by the Department Deputy Secretary to serve on the committee, in addition to their regular day to day duties. Currently, there are 13 members serving on the Department's Administrative Rules Committee. There are zero full-time equivalent staff at DOC who are dedicated solely to the administrative rule committee and the review, revision, or creation of administrative rules. If the bill results in a significantly increased workload, additional staff may be required by the Department.

The bill's fiscal impact is not possible to determine without knowing how future legislation may trigger several components of the bill and how that would impact the workload of the Department's administrative rules committee.

Long-Range Fiscal Implications