



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2017 Assembly Bill 384

**Assembly Substitute
Amendment 2, and Assembly
Amendment 1 to Assembly
Substitute Amendment 2**

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2017 Assembly Bill 384 (“the bill”), Assembly Substitute Amendment 2 (“the substitute amendment”), and Assembly Amendment 1 to Assembly Substitute Amendment 2 (“the amendment to the substitute amendment”) relate to the expiration of administrative rules and also contain provisions relating to other aspects of the rulemaking process.

EXPIRATION OF ADMINISTRATIVE RULES

Currently, once an administrative rule is promulgated, it remains in effect indefinitely until repealed or amended by the agency, or suspended by the Joint Committee for Review of Administrative Rules (JCRAR). The bill and amendments provide for expiration of administrative code chapters every certain number of years unless readopted.

Code Chapter Expiration Dates

The Bill

Under the bill, each chapter of the Administrative Code is scheduled to expire on January 1 of the seventh year after which it was created, repealed and recreated, or readopted. JCRAR is also directed to create a schedule, in consultation with the affected agencies, to expire existing code chapters that are not repealed and recreated prior to January 1, 2027. JCRAR may schedule the expiration date for these chapters on January 1 of any year between 2020 and 2027. At the agency’s request, JCRAR may delay a code chapter’s expiration for up to one year after its expiration date. An agency may not promulgate an emergency rule for the purpose of extending a rule that is subject to expiration.

The Substitute Amendment

Under the substitute amendment, each code chapter is scheduled to expire on January 1 of the ninth year after any of the following: (1) the year in which the chapter is created, or repealed and recreated; (2) the year in which the chapter is readopted, if the readoption occurs through the expedited process described below; or (3) the year after the year in which the agency gives notice of its intent to readopt the chapter, if the readoption occurs through the full promulgation process due to an objection as described below.

JCRAR is directed to create a schedule, in consultation with the affected agencies, for expiration of currently existing code chapters that are not repealed and recreated prior to January 1, 2030. JCRAR may schedule the expiration date for these chapters on January 1 of any year between 2021 and 2030. Similar to the bill, the substitute amendment also allows JCRAR to delay a code chapter's expiration for up to one year, and specifies that an agency may not promulgate an emergency rule for the purpose of extending a rule that is subject to expiration.

The Amendment to the Substitute Amendment

The amendment to the substitute amendment contains only one provision. It modifies the expiration dates of code chapters, under the substitute amendment, so that each code chapter expires on January 1 of the ninth year after any of the following: (1) the year in which the chapter is created, or repealed and recreated; or (2) the year after the year in which the agency gives notice of its intent to readopt the chapter, regardless of whether the readoption occurs through the expedited process or through the full promulgation process.

Agency Notice of Intent to Readopt an Expiring Code Chapter

The Bill

Under the bill, an agency may submit notice of its intent to readopt a code chapter between January 1 and March 1 during the year prior to the chapter's expiration date. If the agency chooses to not submit a notice, the chapter will expire on its expiration date. The agency may only propose to readopt one chapter per notice. The notice must contain an explanation of the chapter and related statutes, and a statement that the rules comply with state and federal statutes.

The Substitute Amendment

Under the substitute amendment, an agency is required to submit a notice of proposed readoption between January 1 and March 1 two years prior to the code chapter's expiration date. The agency may only propose to readopt one chapter per notice. The notice must contain, in addition to the items in the bill, described above, a statement as to whether the agency recommends that the chapter be readopted, readopted with changes, or allowed to expire. The notice must also contain a list of all guidance documents the agency has developed relating to

the chapter. The agency must also provide a copy of any agency guidance documents to members of JCRAR upon request.

Committee Review of Agency's Proposed Readoption

Under the bill and the substitute amendment, an agency's notice of intent to readopt a code chapter must be referred to JCRAR and one standing committee in each house within 10 working days of receipt by the Legislature. The committee review process is as follows.

The Bill

Under the bill, the standing committees and JCRAR have a 40-day period beginning from the date the agency submitted notice to review the code chapter. If no committee member objects to readoption during the review period, the chapter is considered readopted without further action. If any member objects to readoption, the chapter will expire on its expiration date unless the agency, in its discretion, promulgates a rule to readopt the chapter using the standard rulemaking process. During promulgation, the agency may propose changes to the chapter. The scope statement must include a statement that the rule intends to readopt a chapter, and the economic impact analysis must include an analysis of how actual costs for the rule compare to any previous economic impact analysis for a rule affecting the chapter.

The Substitute Amendment

Under the substitute amendment, the standing committees and JCRAR have a period of 30 working days beginning from the date the agency submitted notice to review the code chapter. As under the bill, if no committee member objects to readoption during the review period, the chapter is considered readopted without further action.

If a committee member objects to readoption, the member must specify which section of the code he or she objects to, and the reasons for the objection. JCRAR must then meet within 30 working days after the review period expires to take action on the objection in executive session. If JCRAR does not vote to concur in the objection, the chapter is considered readopted without further action.

If JCRAR votes to concur in the objection, the chapter will expire on its expiration date unless the agency, in its discretion, promulgates a rule to readopt the chapter under the same conditions as under the bill: (1) the agency must use the standard rulemaking process but may propose changes to the chapter; (2) the scope statement must include a statement that the rule intends to readopt a chapter; and (3) the economic impact analysis must include an analysis of how actual costs for the rule compare to any previous economic impact analysis for a rule affecting the chapter. The substitute amendment also specifies that a rule may take effect after the chapter's expiration date, but the rule may not be enforced during the period it is expired.

OTHER PROVISIONS RELATED TO RULEMAKING

Use of Outdated or Derogatory Terms

The bill requires agencies to avoid words and phrases that are outdated or derogatory. The substitute amendment does not include this provision.

Agency Publications

The substitute amendment adds a provision not included in the bill, which requires agencies to identify the applicable federal law, state statute, or administrative rule that supports any statement or interpretation of law the agency makes in any publication regarding the laws the agency administers, including forms, pamphlets, or other informational materials.

BILL HISTORY

On November 6, 2017, Representative Steineke offered Assembly Substitute Amendment 2 and Assembly Amendment 1 to Assembly Substitute Amendment 2. On November 7, 2017, the Assembly Committee on Regulatory Licensing Reform recommended adoption of the amendments on a vote of Ayes, 8; Noes, 1. The committee then recommended passage of the bill, as amended, on a vote of Ayes 6, Noes 3.

AB:jal