



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1018/P4
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DOA:.....Stinebrink, BB0136 - Rules changes

FOR 2017-2019 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

ADMINISTRATIVE RULES; GUIDANCE DOCUMENTS

The bill makes various changes regarding the rule-making procedures established under current law and the adoption by state agencies of “guidance documents.” Significant changes are described below.

Preliminary public hearings and comment periods on scope statements

Current law requires an agency to prepare a statement of the scope of a proposed rule (scope statement), 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. Scope statements must be published in the register after approval by the governor, and an agency head may not approve a scope statement until at least ten days after publication of the scope statement in the register.

The bill eliminates the ten-day waiting period for the agency head to approve a scope statement. The bill also requires an agency, following approval of a scope statement by the governor, to hold a preliminary public hearing and comment period on a scope statement if directed to do so by a cochairperson of the Joint Committee for Review of Administrative Rules (JCRAR). Following such a directive, the agency must submit to the LRB a notice of the hearing and comment period to allow for

public comment and feedback on the scope statement. The agency must hold the preliminary public hearing no sooner than the third day after publication of the notice in the register and submit all comments and feedback received to the agency head. A preliminary public hearing and comment period under the bill is in addition to the public hearing required under current law for certain rules. The bill allows an agency to work on a proposed rule after the scope statement is approved by the governor, but requires the agency to stop work on a proposed permanent rule if JCRAR requests a preliminary public hearing and comment period. In that case, the agency may resume work on the proposed permanent rule once the preliminary public hearing and comment period are concluded.

Passage of bill required for certain rules

The bill provides that if an economic impact analysis, a revised economic impact analysis, or an independent economic impact analysis for a proposed rule indicates that \$10 million or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over any two-year period as a result of the proposed rule, the agency proposing the rule must stop work on the proposed rule and may not continue to promulgate the rule except as follows:

1. The agency may resume the rule-making procedure for the proposed rule upon enactment of a bill that authorizes its promulgation.

2. The agency may modify the proposed rule to address the implementation and compliance costs of the proposed rule. If a revised economic impact analysis prepared by an agency and any independent economic impact analysis prepared following the modification all indicate that \$10 million or more in implementation and compliance costs are not reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over a two-year period as a result of the proposed rule, the agency may then resume the rule-making procedure for the proposed rule.

Independent economic impact analyses

The bill allows a cochairperson of JCRAR or DOA, after an agency submits a copy of an economic impact analysis for a proposed rule to the legislature, but before the proposed rule is submitted to DOA for review and final approval by the governor, to request that an independent economic impact analysis be prepared for the proposed rule. In that case, DOA must contract with a vendor for the preparation of the independent economic impact analysis. The vendor preparing the independent economic impact analysis must complete the independent economic impact analysis within 60 days and must include most of the same information and analysis that is required for an economic impact analysis prepared by an agency. If an independent economic impact analysis is requested for a proposed rule, an agency may not submit the proposed rule to the governor for final approval until the agency receives the completed independent economic impact analysis. Upon completion of an independent economic impact analysis, the vendor preparing the analysis may submit a request for reimbursement of its actual and necessary costs of completing the analysis. The bill specifies circumstances under which either the agency

promulgating the proposed rule or the legislature must pay the costs of the independent economic impact analysis.

In addition, the bill allows JCRAR, when a proposed rule is before JCRAR for final review, to request an independent economic impact analysis for the proposed rule. If JCRAR requests an independent economic impact analysis at that time, the analysis must similarly be completed within 60 days and JCRAR's review period is extended to the tenth working day following receipt by JCRAR of the completed analysis.

Other duties of DOA related to economic impact analyses and rule making

The bill also requires DOA to do all of the following with respect to the rule-making process:

1. Review and approve each initial economic impact analysis prepared by an agency before a proposed rule is submitted to the Legislative Council staff, including by reviewing the economic data and analyses used by the agency in preparing the analysis. If DOA determines that the agency's analysis does not accurately gauge the economic impact of a proposed rule, DOA must recommend any modifications to revise the analysis. An agency may not submit a proposed rule to the Legislative Council Staff for review unless DOA has approved the agency's economic impact analysis. DOA may approve an economic impact analysis only upon determining that the economic impact analysis accurately gauges the economic impact of the proposed rule.

2. Provide training to agencies on appropriate data collection and methods of analysis for purposes of preparing economic impact analyses of proposed rules.

3. Attend JCRAR hearings and present testimony on proposed rules that DOA determines will have an economic impact on specific businesses, business sectors, public utility ratepayers, local governmental units, regulated individuals and entities, or the state's economy as a whole.

Approval of germane modifications to proposed rules

Current law permits an agency to make a germane modification to a proposed rule at certain points during the legislative review process. Under the bill, if an agency makes a germane modification to a proposed rule at any time during the legislative review process, the agency must also submit that modification to the governor for approval. The governor, in his or her discretion, may approve or reject the modification, except that, if the governor does not take action within 10 days after the date of the submittal, the request is considered approved. If the governor does not approve the modification, the agency may not promulgate the proposed rule, except that the agency may resubmit the proposed rule to the legislature without the modification.

Emergency rules

The bill modifies JCRAR's authority under current law to extend the effective period of an emergency rule so that JCRAR is not limited to 60 days in granting an extension of an emergency rule and may grant any number of extensions, subject to the 120-day limit under current law. In addition, the bill also permits JCRAR, within 30 days before the last floorperiod of the biennial legislative session, to extend the effective period of an emergency rule for a period not to extend beyond March 31

of the following year. JCRAR may, if applicable, grant both types of extensions for a particular emergency rule.

Expedited procedure for repealing unauthorized rules

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 may 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.

Sunset of rule-making authority for certain agencies

The bill prohibits a commission or board, including a credentialing board, that has not taken any action with respect to the promulgation of a rule in ten years or more from taking any such action in the future unless a subsequent law specifically authorizes it to do so.

Guidance documents

The bill requires each agency, no less than 21 days before adopting a guidance document, to post the proposed guidance document on the agency's Internet site and submit it to the LRB for publication in the register and to provide a period for persons to submit written comments to the agency on the proposed guidance document. The agency must retain all written comments submitted during the public comment period and consider those comments in determining whether to adopt the guidance document as originally proposed, modify the proposed guidance document, or take any other action. The bill allows for a comment period of less than 21 days with the approval of the governor. The bill also requires each adopted guidance document, while valid, to remain available on the agency's Internet site and requires the agency to permit continuing public comment on the guidance document.

The bill provides that a guidance document does not have the force of law and does not provide the authority for implementing or enforcing a standard, requirement, or threshold, including as a term or condition of any license. An agency that proposes to rely on a guidance document to the detriment of a person in any administrative proceeding must afford the person an adequate opportunity to contest the legality or wisdom of a position taken in the guidance document, and an agency may not use a guidance document to foreclose consideration of any issue raised in the guidance document. The bill also contains other provisions with respect to agency use of and reliance upon guidance documents, and allows certain persons to petition an agency to promulgate a rule in place of a guidance document.

Subject to various exceptions, the bill defines “guidance document” as any formal or official document or communication issued by an agency, including a manual, handbook, directive, or informational bulletin, that 1) explains the agency’s implementation of a statute or rule enforced or administered by the agency, including the current or proposed operating procedure of the agency; or 2) provides guidance or advice with respect to how the agency is likely to apply any statute or rule enforced or administered by the agency, if that guidance or advice is likely to apply to a class of persons similarly affected.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 20.505 (1) (kt) of the statutes is created to read:

20.505 (1) (kt) *Independent economic analyses for administrative rules.* All moneys received under s. 227.137 (4m) (b) 2. to reimburse vendors for conducting independent economic impact analyses under s. 227.137 (4m).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 2. 20.765 (1) (kt) of the statutes is created to read:

20.765 (1) (kt) *Independent economic analyses for administrative rules.* All moneys received from agencies under s. 227.137 (4m) (b) 3. a. to reimburse vendors for conducting independent economic impact analyses under ss. 227.137 (4m) and 227.19 (5) (b) 3.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 3. 35.93 (2) (b) 3. bm. of the statutes is created to read:

35.93 (2) (b) 3. bm. Notices of preliminary public hearings and comment periods under s. 227.136.

SECTION 4. 35.93 (2) (b) 3. im. of the statutes is created to read:

35.93 (2) (b) 3. im. Notices of public comment periods on proposed guidance documents under s. 227.112 (1) (a).

SECTION 5. 73.16 (2) (b) of the statutes is amended to read:

73.16 (2) (b) The department may retroactively apply any rule change that is related to implementing a legislative act or a final and conclusive decision of the tax appeals commission or the courts to take effect no earlier than the act's effective date or the date on which the decision became final and conclusive, unless otherwise prescribed by the legislature, tax appeals commission, or court, and only if the department submits the rule's scope statement to the governor for approval under s. 227.135 (2) no later than 18 months after the latter of the legislative act's publication date, effective date, or initial applicability date, or the date on which the decision becomes final and conclusive. A retroactive application of a rule change not described under this paragraph shall be subject to approval under s. 227.185 (1).

SECTION 6. 227.01 (3m) of the statutes is created to read:

227.01 (3m) (a) "Guidance document" means, except as provided in par. (b), any formal or official document or communication issued by an agency, including a manual, handbook, directive, or informational bulletin, that does any of the following:

1. Explains the agency's implementation of a statute or rule enforced or administered by the agency, including the current or proposed operating procedure of the agency.

2. Provides guidance or advice with respect to how the agency is likely to apply a statute or rule enforced or administered by the agency, if that guidance or advice is likely to apply to a class of persons similarly affected.

(b) “Guidance document” does not include any of the following:

1. A rule or any document or communication that imposes any binding or enforceable legal requirement.

2. A standard adopted, or a statement of policy or interpretation made, whether preliminary or final, in the decision of a contested case, in a private letter ruling under s. 73.035, or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts.

3. Any document or activity described in sub. (13) (a) to (zz), except that “guidance document” includes a pamphlet or other explanatory material described under sub. (13) (r) that otherwise satisfies the definition of “guidance document” under par. (a).

4. Any document that any statute specifically provides is not required to be promulgated as a rule.

5. A declaratory ruling issued under s. 227.41.

6. A formal or informal opinion of the attorney general, including an opinion issued under s. 165.015 (1).

7. A formal or informal advisory opinion issued by the elections commission under s. 5.05 (6a) or by the ethics commission under s. 19.46 (2).

8. Any document or communication for which a procedure for public input, other than that provided under s. 227.112 (1), is provided by law.

9. Any document or communication that is not subject to the right of inspection and copying under s. 19.35 (1).

SECTION 7. 227.01 (13) (intro.) of the statutes is amended to read:

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

SECTION 8. Subchapter II (title) of chapter 227 [precedes 227.10] of the statutes is amended to read:

CHAPTER 227

SUBCHAPTER II

ADMINISTRATIVE RULES AND

GUIDANCE DOCUMENTS

SECTION 9. 227.111 of the statutes is created to read:

227.111 Rule-making authority of certain agencies. (1) In this section, “restricted agency” means an affiliated credentialing board, as defined in s. 15.01 (1g), a board, as defined in s. 15.01 (1r), a commission, as defined in s. 15.01 (2), or an examining board, as defined in s. 15.01 (7), that has not taken any action under this subchapter with respect to the promulgation of a rule in 10 years or more.

(2) Notwithstanding ss. 227.10 and 227.11 and any other provision authorizing or requiring a restricted agency to promulgate rules, a restricted agency may not take any action with respect to the promulgation of a rule unless a subsequent law specifically authorizes such action.

SECTION 10. 227.112 of the statutes is created to read:

227.112 Guidance documents. (1) (a) Except as provided in par. (c), no less than 21 days before adopting a guidance document, an agency shall post the proposed guidance document on the agency's Internet site and, on the same date, submit a notice of the public comment period on the proposed guidance document under par. (b), including a copy of the proposed guidance document and the Web address of the agency's Internet site at which comments may be submitted, to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register. The notice need not be published in the register on the same day the agency posts the proposed guidance document on its Internet site.

(b) The agency shall provide for a period for public comment on a proposed guidance document posted under par. (a), during which any person may submit written comments to the agency with respect to the proposed guidance document. Except as provided in par. (c), the period for public comment shall end no sooner than the 21st day after the date on which the proposed guidance document is posted on the agency's Internet site.

(c) An agency may post a proposed guidance document less than 21 days before adopting the proposed guidance document and with a public comment period shorter than 21 days with the approval of the governor.

(d) An agency shall retain all written comments submitted during the public comment period under par. (b) and shall consider those comments in determining whether to adopt the guidance document as originally proposed, modify the proposed guidance document, or take any other action.

(e) This subsection does not apply to guidance documents adopted before the effective date of this paragraph [LRB inserts date].

(2) An agency shall post each guidance document that the agency has adopted on the agency's Internet site and shall permit continuing public comment on the guidance document. The agency shall ensure that each guidance document that the agency has adopted remains on the agency's Internet site as provided in this subsection until the guidance document is no longer in effect, is no longer valid, or is superseded or until the agency otherwise rescinds its adoption of the guidance document.

(3) A guidance document does not have the force of law and does not provide the authority for implementing or enforcing a standard, requirement, or threshold, including as a term or condition of any license. A guidance document that imposes a regulatory obligation or consequence is invalid, and the regulatory obligation or consequence may not be administered or enforced unless the agency promulgates it as a rule. An agency that proposes to rely on a guidance document to the detriment of a person in any administrative proceeding shall afford the person an adequate opportunity to contest the legality or wisdom of a position taken in the guidance document. An agency may not use a guidance document to foreclose consideration of any issue raised in the guidance document.

(4) If an agency proposes to act in an administrative proceeding at variance with a position expressed in a guidance document, it shall provide a reasonable explanation for the variance. If an affected person in an administrative proceeding may have relied reasonably on the agency's position, the explanation must include a reasonable justification for the agency's conclusion that the need for the variance outweighs the affected person's reliance interest.

(5) Persons that qualify under s. 227.12 to petition an agency to promulgate a rule may, as provided in s. 227.12, petition an agency to promulgate a rule in place of a guidance document.

SECTION 11. 227.12 (4) of the statutes is amended to read:

227.12 (4) If a petition to the department of revenue establishes that the department has established a standard by which it is construing a state tax statute, but has not promulgated a rule to adopt the standard or published the standard in a manner that is available to the public, the department shall, as provided under s. 227.135, submit a statement of the scope of the proposed rule to the governor no later than 90 days after receiving the petition. No later than 270 days after the statement is approved by the governor, the department shall submit the proposed rule in final draft form to the governor for the governor's approval, as provided under s. 227.185 (1). At the department's request, the governor may, at any time prior to the expiration of any deadline specified in this subsection, extend the time for submitting the statement or proposed rule in draft form for any period not to exceed 60 days. The governor may grant more than one extension under this subsection, but the total period for all such extensions may not exceed 120 days. The rule need not adhere to the standard established by the department, but shall address the same circumstances as the standard addresses. If the department fails to comply with this subsection, any of the petitioners may commence an action in circuit court to compel the department's compliance. If an action is commenced under this subsection, the court may compel the department to provide information to the court related to the degree to which the department is enforcing the standard, except that the information provided by the department shall not disclose the identity of any person who is not a party to the action.

SECTION 12. 227.132 of the statutes is created to read:

227.132 Duties of department of administration. The department of administration shall do all of the following:

(1) Provide training to agencies on appropriate data collection and methods of analysis for purposes of preparing economic impact analyses of proposed rules under s. 227.137 (3).

(2) Attend hearings of the joint committee for review of administrative rules and present testimony on proposed rules that the department determines will have an economic impact on specific businesses, business sectors, public utility ratepayers, local governmental units, regulated individuals and entities, or the state's economy as a whole.

(3) Review and approve economic impact analyses as provided under s. 227.137 (3m).

(4) Request independent economic impact analyses under s. 227.137 (4m) when appropriate.

SECTION 13. 227.135 (1) (intro.) of the statutes is amended to read:

227.135 (1) (intro.) An agency shall prepare a statement of the scope of any rule that it plans to promulgate, which shall be approved by the individual or body with policy-making powers over the subject matter of the proposed rule. The statement shall include all of the following:

SECTION 14. 227.135 (2) of the statutes is amended to read:

227.135 (2) An agency that has prepared a statement of the scope of the proposed rule shall present the statement to the governor ~~and to the individual or body with policy-making powers over the subject matter of the proposed rule for approval~~ who, in his or her discretion, may approve or reject the statement of scope.

The agency may not send the statement to the legislative reference bureau for publication under sub. (3) until the governor issues a written notice of approval of the statement. ~~The individual or body with policy-making powers may not approve the statement until at least 10 days after publication of the statement under sub. (3).~~ No state employee or official may perform any activity in connection with the drafting of a proposed rule, except for an activity necessary to prepare the statement of the scope of the proposed rule, until the governor ~~and the individual or body with policy-making powers over the subject matter of the proposed rule approve~~ approves the statement. This subsection does not prohibit an agency from performing an activity necessary to prepare a petition and proposed rule for submission under s. 227.26 (4).

SECTION 15. 227.135 (3) of the statutes is amended to read:

227.135 (3) If the governor approves a statement of the scope of a proposed rule under sub. (2), the agency shall send an electronic copy of the statement to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register. On the same day that the agency sends the statement to the legislative reference bureau, the agency shall send a copy of the statement to the secretary of administration and to the chief clerks of each house of the legislature, who shall distribute the statement to the cochairpersons of the joint committee for review of administrative rules. The agency shall include with any statement of scope sent to the legislative reference bureau the date of the governor's approval of the statement of scope. The legislative reference bureau shall assign a discrete identifying number to each statement of scope and shall include that number and the date of the governor's approval in the publication of the statement of scope in the register.

SECTION 16. 227.136 of the statutes is created to read:

227.136 Preliminary public hearing and comment period. (1) Within 10 days after publication of a statement of the scope of a proposed rule under s. 227.135 (3), either cochairperson of the joint committee for the review of administrative rules may submit a written directive to the agency that prepared the statement for the agency to hold a preliminary public hearing and comment period on the statement of scope as provided in this section.

(2) If the agency is directed to hold a preliminary public hearing and comment period on a statement of scope as provided in sub. (1) or if the agency otherwise opts to do so on its own initiative, the agency shall take no further action with respect to any permanent rule based upon that statement of scope until otherwise permitted under sub. (6) and shall submit to the legislative reference bureau, in a format approved by the legislative reference bureau, a notice of a preliminary public hearing and comment period to allow for public comment and feedback on the statement of scope. The agency may also take any other action it considers necessary to provide notice of the preliminary public hearing and comment period to other interested persons. The notice shall be approved by the individual or body with policy-making powers over the subject matter of the proposed rule and shall include all of the following:

(a) A statement of the date, time, and place of the preliminary public hearing.

(b) The place where comments on the statement of scope should be submitted and the deadline for submitting those comments.

(3) The agency shall hold the preliminary public hearing and comment period in accordance with the notice required under sub. (2), but may not hold the hearing sooner than the 3rd day after publication of the notice in the register.

(4) The agency shall conduct a hearing under this section in accordance with s. 227.18.

(5) The agency shall report all public comments and feedback on the statement of scope of the proposed rule that the agency receives at the preliminary public hearing and comment period to the individual or body with policy-making powers over the subject matter of the proposed rule.

(6) The agency may resume work on a permanent rule upon the conclusion of a preliminary hearing and comment period held under this section.

(7) Failure of any person to receive notice of a preliminary public hearing as provided in this section is not grounds for invalidating any resulting rule if notice of the hearing was published in the register in accordance with s. 35.93 (2) (b) 3. bm.

SECTION 17. 227.137 (3) (intro.) and (a) of the statutes are amended to read:

227.137 (3) (intro.) An economic impact analysis of a proposed rule shall contain information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, regulated individuals and entities, and the state's economy as a whole. ~~When~~ The agency or vendor preparing the analysis, ~~the agency~~ shall solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the proposed rule. The agency or vendor shall prepare the economic impact analysis in coordination with local governmental units that may be affected by the proposed rule. The agency or vendor may also request information that is reasonably necessary for the preparation of an economic impact analysis from other businesses, associations, local governmental units, and individuals and from other agencies. The economic impact analysis shall include all of the following:

(a) An analysis and quantification of the policy problem that the proposed rule is intending to address, including comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem ~~and, if, If~~ the approach chosen by the agency to address that policy problem is different from those approaches, an economic impact analysis prepared by an agency shall include a statement as to why the agency chose a different approach.

SECTION 18. 227.137 (3) (b) of the statutes is renumbered 227.137 (3) (b) (intro.) and amended to read:

227.137 (3) (b) (intro.) An analysis and detailed quantification of the economic impact of the proposed rule, including the implementation and compliance costs that are reasonably expected to be incurred by or passed along to the businesses, local governmental units, and individuals that may be affected by the proposed rule, specifically including all of the following:

SECTION 19. 227.137 (3) (b) 1. and 2. of the statutes are created to read:

227.137 (3) (b) 1. An estimate of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals as a result of the proposed rule, expressed as a single dollar figure. With respect to an independent economic impact analysis prepared under sub. (4m) or s. 227.19 (5) (b) 3., the vendor preparing the analysis shall provide a detailed explanation of any variance from the agency's estimate under this subdivision.

2. A determination, for purposes of the requirement under s. 227.139, as to whether \$10,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local

governmental units, and individuals over any 2-year period as a result of the proposed rule.

SECTION 20. 227.137 (3c) of the statutes is created to read:

227.137 (3c) An agency may not begin soliciting information and advice under sub. (3) until the 10-day period under s. 227.136 (1) has concluded or, if the agency holds a preliminary hearing and comment period as provided in s. 227.136 (2), until the agency is permitted to resume work on the rule under s. 227.136 (6), whichever occurs later.

SECTION 21. 227.137 (3m) of the statutes is created to read:

227.137 (3m) Prior to submitting an economic impact analysis prepared under sub. (2) to the legislative council staff under s. 227.15 (1), an agency shall submit the economic impact analysis to the department of administration. The department of administration shall review the economic impact analysis and determine whether the data used by the agency in preparing the analysis are appropriate for determining the economic impact of the proposed rule and whether the analysis accurately gauges the economic impact of the proposed rule. If the department of administration determines that the agency's analysis does not accurately gauge the economic impact of the proposed rule, it shall recommend any modifications to the economic impact analysis that it considers necessary and direct the agency to revise the analysis. An agency may not submit an economic impact analysis to the legislative council staff under s. 227.15 (1) without the approval of the department of administration. The department of administration may approve an economic impact analysis only upon determining that the economic impact analysis accurately gauges the economic impact of the proposed rule. The department of administration shall similarly review and approve any revised economic impact analysis prepared

under sub. (4). The department of administration shall, upon approving an economic impact analysis, submit a statement indicating that approval to the agency.

SECTION 22. 227.137 (4m) of the statutes is created to read:

227.137 (4m) (a) After an agency submits an economic impact analysis for a proposed rule to the legislature under sub. (4), but before the agency submits the proposed rule for approval under s. 227.185 (1), the department of administration or either cochairperson of the joint committee for review of administrative rules may request an independent economic impact analysis to be prepared for the proposed rule.

(b) 1. If the department of administration requests an independent economic impact analysis under par. (a), the department shall notify the agency proposing the proposed rule and shall contract with a vendor that is not an agency to prepare the independent economic impact analysis. If a cochairperson of the joint committee for review of administrative rules requests an independent economic impact analysis under par. (a), the cochairperson shall notify the agency proposing the proposed rule and shall direct the department of administration to contract with a vendor that is not an agency to prepare the independent economic impact analysis.

2. Upon completion of an independent economic impact analysis requested by the department of administration, the vendor preparing the analysis may submit a request to the department of administration for reimbursement of its actual and necessary costs of completing the analysis, and the department of administration shall assess the agency that is proposing the proposed rule for those costs. The department of administration shall credit all moneys received under this subdivision to the appropriation account under s. 20.505 (1) (kt) and shall reimburse a person

who submits a request for reimbursement under this subdivision from the appropriation account under s. 20.505 (1) (kt).

3. Upon completion of an independent economic impact analysis requested by a cochairperson of the joint committee for review of administrative rules, the vendor preparing the analysis may submit a request to the committee for reimbursement of its actual and necessary costs of completing the analysis. Costs of completing the independent economic impact analysis shall be paid as follows:

a. If the estimate in the independent economic impact analysis of total implementation and compliance costs under sub. (3) (b) 1. varies from the agency's estimate by 15 percent or more or varies from the agency's determination that there will be no implementation or compliance costs, the committee shall assess the agency that is proposing the proposed rule for those costs. The committee shall credit all moneys received under this subd. 3. a. to the appropriation account under s. 20.765 (1) (kt) and shall reimburse the vendor from the appropriation account under s. 20.765 (1) (kt).

b. If the estimate in the independent economic impact analysis of total implementation and compliance costs under sub. (3) (b) 1. does not vary from the agency's estimate by 15 percent or more or is in accord with the agency's determination that there will be no implementation and compliance costs, the committee shall reimburse the vendor in equal parts from the appropriation accounts under s. 20.765 (1) (a) and (b).

(c) A vendor preparing an independent economic impact analysis under par. (b) shall do all of the following:

1. Include in the analysis the information that is required under sub. (3).

2. Upon completion of the analysis, submit the analysis to the agency, to the department of administration, to the governor, and to the chief clerks of each house of the legislature, who shall distribute the analysis to the presiding officers of their respective houses, to the chairpersons of the appropriate standing committees of their respective houses, as designated by those presiding officers, and to the cochairpersons of the joint committee for review of administrative rules.

3. Complete the independent economic impact analysis within 60 days after contracting to prepare the analysis.

(d) When an independent economic impact analysis is requested under par. (a), the agency may not submit the proposed rule for approval under s. 227.185 (1) until the agency receives the completed independent economic impact analysis.

SECTION 23. 227.137 (6) and (7) of the statutes are repealed.

SECTION 24. 227.139 of the statutes is created to read:

227.139 Passage of bill required for certain rules. (1) If an economic impact analysis prepared under s. 227.137 (2), a revised economic impact analysis prepared under s. 227.137 (4), or an independent economic impact analysis prepared under s. 227.137 (4m) or 227.19 (5) (b) 3. indicates that \$10,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over any 2-year period as a result of the proposed rule, the agency proposing the rule shall stop work on the proposed rule and may not continue promulgating the proposed rule notwithstanding any provision authorizing or requiring the agency to promulgate the proposed rule, except as authorized under sub. (2).

(2) (a) Any member of the legislature may introduce a bill authorizing an agency to promulgate a rule that the agency is prohibited from promulgating under

sub. (1). The agency may resume the rule-making process as provided in this subchapter upon enactment of a bill introduced under this paragraph.

(b) If an agency is prohibited from promulgating a rule under sub. (1), the agency may modify the proposed rule, if the modification is germane to the subject matter of the proposed rule, to address the implementation and compliance costs of the proposed rule. If the agency modifies a proposed rule under this paragraph, the agency shall prepare a revised economic impact analysis under s. 227.137 (4). Following the modification, the agency may continue with the rule-making process as provided in this subchapter if the revised economic impact analysis prepared by the agency indicates, and any independent economic impact analysis prepared under s. 227.137 (4m) or 227.19 (5) (b) 3. subsequent to the agency's modification also indicates, that \$10,000,000 or more in implementation and compliance costs are not reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over any 2-year period as a result of the proposed rule.

(3) This section does not apply to rules promulgated under s. 227.24.

SECTION 25. 227.14 (2) (a) 3m. of the statutes is created to read:

227.14 **(2)** (a) 3m. A summary of any public comments and feedback on the statement of scope of the proposed rule that the agency received at any preliminary public hearing and comment period held under s. 227.136 and a description of how and to what extent the agency took those comments and that feedback into account in drafting the proposed rule.

SECTION 26. 227.14 (4m) of the statutes is amended to read:

227.14 **(4m)** NOTICE OF SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. On the same day that an agency submits a proposed rule to the legislative council staff under s.

227.15, the agency shall prepare a written notice of the agency's submittal to the legislative council staff. The notice shall include a statement of the date on which the proposed rule has been submitted to the legislative council staff for review, of the subject matter of the proposed rule, and of whether a public hearing on the proposed rule is required under s. 227.16, and shall identify the organizational unit within the agency that is primarily responsible for the promulgation of the rule. The notice shall also include a statement containing the identifying number of the statement of scope for the proposed rule assigned under s. 227.135 (3), the date of publication and issue number of the register in which the statement of scope is published, and the date of approval by the department of administration of the ~~statement of scope~~ by the individual or body with policy-making powers over the subject matter of the proposed rule under s. 227.135 (2) agency's initial economic impact analysis under s. 227.137 (3m). The notice shall be approved by the individual or body with policy-making powers over the subject matter of the proposed rule. The agency shall send an electronic copy of the notice to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register. On the same day that the agency sends the notice to the legislative reference bureau, the agency shall send a copy of the notice to the secretary of administration.

SECTION 27. 227.15 (1) of the statutes is amended to read:

227.15 (1) SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. Prior to a public hearing on a proposed rule required under s. 227.16 or, if no such public hearing is required, prior to notice under s. 227.19, an agency shall submit the proposed 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), (3), and (4), the economic impact analysis required under s. 227.137 (2), and any revised

economic impact analysis required under s. 227.137 (4). An agency may not hold a public hearing on a proposed rule or give notice under s. 227.19 until after it has received a written report of the legislative council staff review of the proposed rule or until after the initial review period of 20 working days under sub. (2) (intro.), whichever comes first. An agency may give notice of a public hearing prior to receipt of the legislative council staff report. This subsection does not apply to rules promulgated under s. 227.24.

SECTION 28. 227.15 (1m) (bm) of the statutes is amended to read:

227.15 **(1m)** (bm) The economic impact analysis required under s. 227.137 (2) ~~and~~, any revised economic impact analysis required under s. 227.137 (4), and any independent economic impact analysis prepared under s. 227.137 (4m).

SECTION 29. 227.16 (1) of the statutes is amended to read:

227.16 **(1)** ~~Except as provided under sub. (2)~~ In addition to any preliminary public hearing and comment period held under s. 227.136, all rule making by an agency shall be preceded by notice and public hearing as provided in ss. 227.17 and 227.18, except as provided in sub. (2).

SECTION 30. 227.16 (6) of the statutes is renumbered 227.136 (8) and amended to read:

227.136 **(8)** For the purpose of soliciting public comment, an agency may hold a hearing on the general subject matter of possible or anticipated rules before preparing a statement of scope for a proposed rule in draft form. A hearing held under this subsection does not ~~satisfy the requirement of sub. (1) with respect to the promulgation of a specific proposed rule~~ relieve the agency from its obligation to comply with a directive under sub. (1) or the requirement to hold a hearing under s. 227.16.

SECTION 31. 227.17 (1) (intro.) of the statutes is amended to read:

227.17 (1) (intro.) If a hearing is required under s. 227.16, the agency shall do all of the following:

SECTION 32. 227.17 (3) (eg) of the statutes is created to read:

227.17 (3) (eg) Any independent economic impact analysis prepared under s. 227.137 (4m).

SECTION 33. 227.17 (3) (em) of the statutes is repealed.

SECTION 34. 227.185 of the statutes is renumbered 227.185 (1) and amended to read:

227.185 (1) After a proposed rule is in final draft form, the agency shall submit the proposed rule to the governor for approval. The governor, in his or her discretion, may approve or reject the proposed rule. If the governor approves a proposed rule, the governor shall provide the agency with a written notice of that approval. No proposed rule may be submitted to the legislature for review under s. 227.19 (2) unless the governor has approved the proposed rule in writing. The agency shall notify the joint committee for review of administrative rules whenever it submits a proposed rule for approval under this subsection.

SECTION 35. 227.185 (2) of the statutes is created to read:

227.185 (2) (a) If an agency makes a germane modification to a proposed rule under s. 227.19 (4) (b) 3., 3m., or 4., the agency shall submit the modification to the governor for approval. The governor, in his or her discretion, may approve or reject the modification, but if the governor does not notify the agency within 10 working days after the date of the agency's submittal that the governor does not approve the modification or that the governor requires additional time to review the modification, the modification shall be considered approved and may be made as

proposed by the agency. If the governor approves a modification prior to the expiration of the 10-day period or after notifying the agency that he or she will require additional time to review the modification, he or she shall provide the agency with a written notice of that approval. If the governor does not approve the modification, he or she shall provide the agency with a written notice of that nonapproval and the agency may not promulgate the proposed rule, except that the agency may resubmit the proposed rule to the legislature as provided in s. 227.19 without the modification.

(b) This subsection does not apply to a proposed rule to which s. 227.19 (5) (dm) applies.

SECTION 36. 227.19 (2) of the statutes is amended to read:

227.19 (2) NOTIFICATION OF LEGISLATURE. An agency shall submit a notice to the chief clerk of each house of the legislature when a proposed rule is in final draft form. The notice shall be submitted in triplicate and shall be accompanied by a report in the form specified under sub. (3). A notice received under this subsection after the last day of the legislature's final general-business floorperiod in the biennial session as established in the joint resolution required under s. 13.02 (3) shall be considered received on the first day of the next regular session of the legislature, unless the presiding officers of both houses direct referral of the notice and report under this subsection before that day. The presiding officer of each house of the legislature shall, within 10 working days following the day on which the notice and report are received, direct the appropriate chief clerk to refer the notice and report to one standing committee. The agency shall submit to the legislative reference bureau for publication in the register, in an electronic format approved by the legislative reference bureau, a statement that a proposed rule has been submitted to the chief

clerk of each house of the legislature. The agency shall also include in the statement the date of approval of the proposed rule by the governor under s. 227.185 (1). Each chief clerk shall enter a similar statement in the journal of his or her house.

SECTION 37. 227.19 (3) (intro.) of the statutes is amended to read:

227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be in writing and shall include the proposed rule in the form specified in s. 227.14 (1); the material specified in s. 227.14 (2), (3), and (4); including any statement, suggested changes, or other material submitted to the agency by the small business regulatory review board; a copy of any economic impact analysis prepared by the agency under s. 227.137 (2); a copy of any revised economic impact analysis prepared by the agency under s. 227.137 (4); a copy of any ~~report prepared by the department of administration under s. 227.137 (6);~~ independent economic impact analysis prepared under s. 227.137 (4m); a copy of any energy impact report received from the public service commission under s. 227.117 (2); and a copy of any recommendations of the legislative council staff. The report shall also include all of the following:

SECTION 38. 227.19 (3) (c) of the statutes is amended to read:

227.19 (3) (c) A list of the persons who appeared or registered for or against the proposed rule at a public hearing held under s. 227.136 or 227.16.

SECTION 39. 227.19 (4) (b) 1. (intro.) of the statutes is amended to read:

227.19 (4) (b) 1. (intro.) Except as otherwise provided under ~~subds. 1m. and 5.~~ in this paragraph, the committee review period for each committee extends for 30 days after referral of the proposed rule to the committee under sub. (2). If the chairperson or the cochairpersons of a committee take either of the following actions within the 30-day period, the committee review period for that committee is

continued for 30 days from the date on which the first 30-day review period would have expired:

SECTION 40. 227.19 (5) (b) 1. (intro.) of the statutes is amended to read:

227.19 (5) (b) 1. (intro.) Except as otherwise provided in ~~subd. 1m.~~ this paragraph, the review period for the joint committee for review of administrative rules extends for 30 days after the last referral of a proposed rule and any objection to that committee, and during that review period that committee may take any action on the proposed rule in whole or in part permitted under this subsection. The joint committee for review of administrative rules shall meet and take action in executive session during that period with respect to any proposed rule or any part of a proposed rule to which a committee has objected and may meet and take action in executive session during that period with respect to any proposed rule or any part of a proposed rule to which no committee has objected, except that if the cochairpersons take either of the following actions within the 30-day period, the joint committee review period is continued for 30 days from the date on which the first 30-day review period would have expired:

SECTION 41. 227.19 (5) (b) 3. of the statutes is created to read:

227.19 (5) (b) 3. The joint committee for review of administrative rules, by a majority vote of a quorum of the committee, may request the preparation of an independent economic impact analysis for a proposed rule, regardless of whether an independent economic impact analysis was prepared under s. 227.137 (4m). If the joint committee for review of administrative rules requests an independent economic impact analysis under this subdivision, the committee shall notify the agency proposing the proposed rule and shall direct the department of administration to contract with a vendor that is not an agency to prepare the independent economic

impact analysis. The vendor preparing the independent economic impact analysis shall comply with s. 227.137 (4m) (c) 1. to 3. Upon completion of an independent economic impact analysis requested under this subdivision, the vendor preparing the analysis may submit a request to the committee for reimbursement of its actual and necessary costs of completing the analysis. Costs of completing the independent economic impact analysis shall be paid as provided in s. 227.137 (4m) (b) 3. a. and b. If the committee requests an independent economic impact analysis under this subdivision, the review period for the committee is extended to the 10th working day following receipt by the committee of the completed analysis.

SECTION 42. 227.24 (1) (a) of the statutes is amended to read:

227.24 (1) (a) An agency may, except as provided in s. 227.136 (1), promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements under this chapter if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

SECTION 43. 227.24 (1) (e) 1d. of the statutes is amended to read:

227.24 (1) (e) 1d. Prepare a statement of the scope of the proposed emergency rule as provided in s. 227.135 (1), obtain approval of the statement as provided in s. 227.135 (2), ~~and~~ send the statement to the legislative reference bureau for publication in the register as provided in s. 227.135 (3), and hold a preliminary public hearing and comment period if directed under s. 227.136 (1). If the agency changes the scope of a proposed emergency rule as described in s. 227.135 (4), the agency shall prepare and obtain approval of a revised statement of the scope of the proposed emergency rule as provided in s. 227.135 (4). No state employee or official may perform any activity in connection with the drafting of a proposed emergency rule

except for an activity necessary to prepare the statement of the scope of the proposed emergency rule until the governor and the individual or body with policy-making powers over the subject matter of the proposed emergency rule approve approves the statement.

SECTION 44. 227.24 (2) (a) of the statutes is renumbered 227.24 (2) (a) (intro.) and amended to read:

227.24 (2) (a) (intro.) At the request of an agency, the joint committee for review of administrative rules may, at any time prior to the expiration date of a rule promulgated under sub. (1) (a), extend the effective period of the emergency rule or part of the emergency rule for as follows:

1. For a period specified by the committee not to exceed 60 days. Any number of extensions may be granted under this paragraph subdivision, but the total period for all extensions under this subdivision may not exceed 120 days. The committee may grant an extension under this subdivision at any time.

SECTION 45. 227.24 (2) (a) 2. of the statutes is created to read:

227.24 (2) (a) 2. For a period specified by the committee that does not extend beyond March 31 of the following year. An extension under this subdivision may be in addition to, and may overlap with, an extension granted under subd. 1. The committee may grant an extension under this subdivision only within 30 days before the last day of the legislature's final general-business floorperiod in the biennial session as established in the joint resolution required under s. 13.02 (3).

SECTION 46. 227.24 (2) (am) of the statutes is amended to read:

227.24 (2) (am) Any request by an agency to extend the effective period of the emergency rule or part of the emergency rule shall be made in writing to the joint

committee for review of administrative rules no later than 30 days before the ~~initial~~ expiration date of the emergency rule.

SECTION 47. 227.24 (4) of the statutes is amended to read:

227.24 (4) PUBLIC HEARING. Notwithstanding sub. (1) (a) and (b) and in addition to any preliminary public hearing and comment period held under sub. (1) (e) 1d., an agency shall hold a public hearing within 45 days after it promulgates a rule under sub. (1). If within that 45-day period the agency submits to the legislative council staff under s. 227.15 a proposed rule corresponding to the rule under sub. (1), it shall hold a public hearing on both rules within 90 days after promulgation of the rule under sub. (1), or within 30 days after the agency receives the report on the proposed rule prepared by the legislative council under s. 227.15 (2), whichever occurs later.

SECTION 48. 227.26 (4) of the statutes is created to read:

227.26 (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 may 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.

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.

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:

a. Approve the agency's petition if the committee determines that the proposed rule would repeal an unauthorized rule.

b. Deny the agency's petition.

c. 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 may 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.

SECTION 9352. Initial applicability; Other.

(1) ADMINISTRATIVE RULES. The treatment of sections 20.505 (1) (kt), 20.765 (1) (kt), 35.93 (2) (b) 3. bm., 73.16 (2) (b), 227.12 (4), 227.132, 227.135 (1) (intro.), (2), and

(3), 227.136, 227.137 (3) (intro.), (a), and (b) 1. and 2., (3c), (3m), (4m), (6), and (7), 227.139, 227.14 (2) (a) 3m. and (4m), 227.15 (1) and (1m) (bm), 227.16 (1) and (6), 227.17 (1) (intro.) and (3) (eg) and (em), 227.185 (2), 227.19 (2), (3) (intro.) and (c), (4) (b) 1., and (5) (b) 1. (intro.) and 3., and 227.24 (1) (a) and (e) 1d., (2) (a) 2. and (am), and (4) and the renumbering and amendment of sections 227.137 (3) (b), 227.185, and 227.24 (2) (a) of the statutes first apply to a proposed rule or emergency rule whose statement of scope is presented for approval under section 227.135 (2) of the statutes on the effective date of this subsection.

SECTION 9452. Effective dates; Other.

(1) ADMINISTRATIVE RULES. The treatment of sections 20.505 (1) (kt), 20.765 (1) (kt), 35.93 (2) (b) 3. bm. and im., 73.16 (2) (b), 227.01 (3m) and (13) (intro.), subchapter II (title) of chapter 227, 227.112, 227.12 (4), 227.132, 227.135 (1) (intro.), (2), and (3), 227.136, 227.137 (3) (intro.), (a), and (b) 1. and 2., (3c), (3m), (4m), (6), and (7), 227.139, 227.14 (2) (a) 3m. and (4m), 227.15 (1) and (1m) (bm), 227.16 (1) and (6), 227.17 (1) (intro.) and (3) (eg) and (em), 227.185 (2), 227.19 (2), (3) (intro.) and (c), (4) (b) 1., and (5) (b) 1. (intro.) and 3., 227.24 (1) (a) and (e) 1d., (2) (a) 2. and (am), and (4), and 227.26 (4), the renumbering and amendment of sections 227.137 (3) (b), 227.185, and 227.24 (2) (a) of the statutes, and SECTION 9352 (1) of this act take effect on July 1, 2018.

(END)