



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 57
[2017 Senate Bill 15]

**Changes to the Administrative
Rulemaking Process**

2017 WISCONSIN ACT 57

2017 Wisconsin Act 57 makes various changes to the administrative rulemaking process, including aspects of the process relating to preparation of statements of scope, economic impact analysis (EIA), gubernatorial approval of rules, and promulgation of emergency rules.

Statement of Scope and Initial Agency Rule Drafting

With regard to statements of scope and initial agency rule drafting, Act 57 provides for the review of an agency's scope statement by the Department of Administration (DOA), prior to presentation of the scope statement to the Governor for his or her approval. Under the Act, DOA must determine whether the agency has explicit authority to promulgate the rule. The Act also provides for the distribution of scope statements to the Co-Chairs of the Joint Committee for Review of Administrative Rules (JCRAR) upon publication of the statement with the Legislative Reference Bureau.

The Act also creates a process for preliminary comment and hearing on a statement of scope. Under the Act, the comment period and hearing may be requested by a Co-Chair of JCRAR or held by the agency on its own initiative. Generally, under current law, an agency may not work on the drafting of a proposed rule until the scope statement is approved by the Governor and the agency head or board with policy-making authority. When applicable, the preliminary comment period and scope statement hearing would take place before approval of the scope statement by the agency head or board with policy-making authority.

Economic Impact Analysis

The Act makes several changes relating to an agency's preparation of an EIA as part of its rulemaking process. First, the Act directs an agency to determine whether a proposed rule has \$10 million or more in implementation and compliance costs over a two-year period. Generally, upon

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

such a finding, an agency may not promulgate a rule absent authorizing legislation or germane modification to the proposed rule to reduce costs below the \$10 million threshold. However, the process for authorizing such rules does not apply to certain rules promulgated by the Department of Natural Resources, if those rules are no more stringent than required under the federal Clean Air Act.

Additionally, prior to gubernatorial approval, the Act authorizes a Co-Chair of JCRAR to request and contract for the preparation of an independent EIA of a proposed rule, with the cost of the independent EIA paid by the Co-Chair's house of the Legislature if the result varies by less than 15% from the agency's EIA, and paid by the agency that is proposing the rule if the result varies by more than 15%, except that the Joint Finance Committee may determine the funding source for contracts with a maximum potential obligation in excess of \$50,000. Before contracting for the preparation of an EIA, a request for an independent EIA by a Co-Chair of JCRAR must be approved by the Organization Committee of the Co-Chair's house of the Legislature.

During the JCRAR review period, the Act also authorizes JCRAR to request and contract for the preparation of an independent EIA of a proposed rule, with the cost of the independent EIA paid by the Legislature if the result varies by less than 15% from the agency's EIA, and paid by the agency that is proposing the rule if the result varies by more than 15%, except that the Joint Finance Committee may determine the funding source for contracts with a maximum potential obligation in excess of \$50,000. Before contracting for the preparation of an EIA, a request for an independent EIA by JCRAR must be approved by both the Committee on Senate Organization and the Committee on Assembly Organization.

Indefinite Objection by JCRAR

The Act creates a new procedure that would, as an alternative to the temporary objection process under current law, allow JCRAR to indefinitely object to any proposed rule, for the same reasons a temporary objection may be made under current law. Under this provision, an agency would not be able to promulgate a rule following indefinite objection unless a bill authorizing such promulgation was enacted into law.

Gubernatorial Approval

The Act 57 specifies that an agency must provide notice to the Co-Chairs of JCRAR when a proposed rule is submitted for gubernatorial approval.

Emergency Rules

The Act specifies that the process for preliminary comment and hearing on a statement of scope applies to the promulgation of an emergency rule, but that emergency rules are not subject to the limitations relating to authorization of high-cost rules, described above.

Effective date: September 1, 2017. The Act first applies to rules whose scope statements are submitted for gubernatorial approval on September 1, 2017.

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SG:mcm;jal