



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5586/1
MED:amn

2017 ASSEMBLY BILL 1038

March 21, 2018 - Introduced by Representatives SPREITZER, SARGENT and POPE, cosponsored by Senator VINEHOUT. Referred to Committee on Natural Resources and Sporting Heritage.

1 **AN ACT to amend** 227.135 (2), 227.135 (3), 227.137 (2), 227.137 (3) (intro.),
2 227.137 (4), 227.14 (2) (a) 6., 227.14 (4m), 227.15 (1), 227.15 (1m) (bm), 227.185,
3 227.19 (2), 227.19 (3) (intro.), 227.24 (1) (e) 1d. and 227.24 (1) (e) 1g.; and **to**
4 **create** 227.135 (2m), 227.135 (6), 227.137 (2m), 227.137 (3m) and 227.137 (4r)
5 of the statutes; **relating to:** the procedure for promulgating a proposed rule
6 that is considered at the joint annual spring fish and wildlife rule hearing of the
7 Department of Natural Resources and county meeting of the Wisconsin
8 Conservation Congress.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the rule-making process with respect to proposed administrative rules considered at the joint annual spring fish and wildlife rule hearing of the Department of Natural Resources and county meeting of the Wisconsin Conservation Congress (spring DNR-WCC meeting).

Gubernatorial approval and statements of scope for proposed rules

Current law requires a statement of the scope of a proposed rule to be presented to the Department of Administration and be approved by the governor and the individual or body that has policy-making powers for a state agency before a state employee or official may perform any activity in connection with the drafting of the

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proposed rule. Under this bill, for rules that are considered at the spring DNR-WCC meeting, only the Natural Resources Board (board) is required to approve a statement of scope before those activities may be performed.

Under current law, a state agency must prepare and obtain approval of a revised statement of scope if, after a statement of scope is approved, the agency changes the scope of the proposed rule in any meaningful or measurable way. Under the bill, this requirement does not apply to rules that are considered at the spring DNR-WCC meeting.

Under current law, a state agency must prepare and obtain approval of a statement of scope for a proposed emergency rule in the same manner as a statement of scope is prepared and approved for a nonemergency rule. Under the bill, a statement of scope is not required for emergency rules considered at the spring DNR-WCC meeting.

Current law requires a state agency to submit a proposed rule in final draft form to the governor for approval before the rule may be submitted to the legislature for review and to submit a proposed emergency rule in final draft form to the governor for approval before the emergency rule may be filed with the Legislative Reference Bureau for publication. The bill eliminates these requirements for gubernatorial approval for rules that are considered at the spring DNR-WCC meeting.

Finally, the bill permits automatic approval of a statement of scope for rules that are considered at the spring DNR-WCC meeting if the board does not disapprove the statement of scope within 30 days after it is presented to the board, or by the eleventh day after its publication in the Wisconsin Administrative Register, whichever is later.

Economic impact analyses for proposed rules

When report must be prepared. Current law requires each state agency to prepare an economic impact analysis for all permanent rules proposed by the agency. In addition, current law requires a state agency to prepare a revised economic impact analysis if a proposed rule is modified after the original economic impact analysis is submitted so as to significantly change the economic impact of the proposed rule.

Under this bill, for rules that are considered at the spring DNR-WCC meeting, an economic impact analysis is required only if the secretary directs the analysis to be prepared on the petition of a municipality; an association that represents a farm, labor, business, or professional group; or five or more persons who would be affected by the proposed rule. The bill requires the secretary to direct the preparation of such an analysis if 1) the proposed rule would cost affected persons \$20,000,000 or more during each of the first five years after the rule's implementation to comply with the rule; or 2) the rule would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

Content of analysis. Current law requires certain specific information to be included in an economic impact analysis.

This bill eliminates the requirements that this information be included in an economic impact analysis for rules that are considered at the spring DNR-WCC meeting. Under this bill, an economic impact analysis that is required for rules that

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are considered at the spring DNR-WCC meeting must instead contain information on the effect of the proposed rule on specific businesses, business sectors, and the state's economy and must include all of the following: 1) an analysis and quantification of the problem, including any risks to public health or the environment, that the rule is intending to address; 2) an analysis and quantification of the economic impact of the rule, including costs reasonably expected to be incurred by the state, businesses, governmental units, and affected individuals; and 3) an analysis of benefits of the rule, including how the rule reduces the risks and addresses the problems that the rule is intended to address.

Independent economic impact analyses. Current law allows for an independent economic impact analysis to be requested and prepared for a proposed rule under certain circumstances. An independent economic impact analysis must be prepared by a person other than an agency and must contain much of the same information required for an economic impact analysis prepared by an agency under current law.

Under the bill, an independent economic impact analysis may not be requested for a rule considered at the spring DNR-WCC meeting.

Bill required for certain rules. Under current law, subject to certain exceptions, if an economic impact analysis or an independent economic impact analysis prepared for a proposed rule 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 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 promulgating the proposed rule unless a) the agency modifies the proposed rule to address its implementation and compliance costs; or b) a bill is enacted authorizing the agency to promulgate the rule.

Under the bill, these provisions do not apply with respect to a rule considered at the spring DNR-WCC meeting.

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:

1 **SECTION 1.** 227.135 (2) of the statutes, as affected by 2017 Wisconsin Act 108,
2 is amended to read:

3 227.135 (2) ~~An~~ Except as provided in sub. (2m), an agency that has prepared
4 a statement of the scope of the proposed rule shall present the statement to the
5 department of administration, which shall make a determination as to whether the

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1 agency has the explicit authority to promulgate the rule as proposed in the statement
2 of scope and shall report the statement of scope and its determination to the governor
3 who, in his or her discretion, may approve or reject the statement of scope. The
4 agency may not send the statement to the legislative reference bureau for
5 publication under sub. (3) until the governor issues a written notice of approval of
6 the statement. The agency shall also present the statement to the individual or body
7 with policy-making powers over the subject matter of the proposed rule for approval.
8 The individual or body with policy-making powers may not approve the statement
9 until at least 10 days after publication of the statement under sub. (3) and, if a
10 preliminary public hearing and comment period are held by the agency under s.
11 227.136, until the individual or body has received and reviewed any public comments
12 and feedback received from the agency under s. 227.136 (5). No state employee or
13 official may perform any activity in connection with the drafting of a proposed rule
14 to which this subsection applies, except for an activity necessary to prepare the
15 statement of the scope of the proposed rule until the governor and the individual or
16 body with policy-making powers over the subject matter of the proposed rule
17 approve the statement. This subsection does not prohibit an agency from performing
18 an activity necessary to prepare a petition and proposed rule for submission under
19 s. 227.26 (4).

20 **SECTION 2.** 227.135 (2m) of the statutes is created to read:

21 227.135 (2m) If the department of natural resources prepares a statement of
22 the scope of a proposed rule that is considered at the joint annual spring fish and
23 wildlife rule hearing of the department of natural resources and county meeting of
24 the Wisconsin conservation congress, that department shall present the statement
25 to the natural resources board for approval. The natural resources board may not

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1 approve the statement until at least 10 days after publication of the statement under
2 sub. (3) and, if the preliminary public hearing and comment period are held by the
3 department under s. 227.136, until the board has received and reviewed any public
4 comments and feedback from the department under s. 227.136 (5). If the natural
5 resources board does not disapprove the statement within 30 days after the
6 statement is presented to that board or by the 11th day after publication of the
7 statement in the register, whichever is later, the statement is considered to be
8 approved. No state employee or official may perform any activity in connection with
9 the drafting of a proposed rule to which this subsection applies except for an activity
10 necessary to prepare the statement of the scope of the proposed rule until the natural
11 resources board approves the statement.

12 **SECTION 3.** 227.135 (3) of the statutes, as affected by 2017 Wisconsin Act 57,
13 is amended to read:

14 227.135 (3) ~~If the governor approves a statement of the scope of a proposed rule~~
15 ~~under Subject to sub. (2), the agency shall send an electronic copy of the a statement~~
16 ~~of the scope of a proposed rule to the legislative reference bureau, in a format~~
17 ~~approved by the legislative reference bureau, for publication in the register. On the~~
18 ~~same day that the agency sends the statement to the legislative reference bureau,~~
19 ~~the agency shall send a copy of the statement to the secretary of administration and~~
20 ~~to the chief clerks of each house of the legislature, who shall distribute the statement~~
21 ~~to the cochairpersons of the joint committee for review of administrative rules. The~~
22 ~~agency shall include with any statement of scope sent to the legislative reference~~
23 ~~bureau the date of the governor's approval of the statement of scope, if gubernatorial~~
24 ~~approval of the statement of scope is required. The legislative reference bureau shall~~
25 ~~assign a discrete identifying number to each statement of scope and shall include~~

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1 that number and, if applicable, the date of the governor's approval in the publication
2 of the statement of scope in the register.

3 **SECTION 4.** 227.135 (6) of the statutes is created to read:

4 227.135 (6) This section does not apply to emergency rules that are considered
5 at the joint annual spring fish and wildlife rule hearing of the department of natural
6 resources and county meeting of the Wisconsin conservation congress.

7 **SECTION 5.** 227.137 (2) of the statutes is amended to read:

8 227.137 (2) ~~An~~ Except as provided in sub. (2m), an agency shall prepare an
9 economic impact analysis for a proposed rule before submitting the proposed rule to
10 the legislative council staff under s. 227.15.

11 **SECTION 6.** 227.137 (2m) of the statutes is created to read:

12 227.137 (2m) After the legislative reference bureau publishes under s. 227.135
13 (3) a statement of the scope of a proposed rule that is considered at the joint annual
14 spring fish and wildlife rule hearing of the department of natural resources and
15 county meeting of the Wisconsin conservation congress, and before that department
16 submits the notice of the proposed rule to the legislature for review under s. 227.19
17 (2), a municipality, an association that represents a farm, labor, business, or
18 professional group, or 5 or more persons who would be directly and uniquely affected
19 by the proposed rule may submit a petition to the department of administration
20 asking the secretary of administration to direct the department of natural resources
21 to prepare an economic impact analysis for the proposed rule. If the secretary of
22 administration directs the department of natural resources to prepare the economic
23 impact analysis, that department shall prepare the economic impact analysis before
24 submitting the notice of the proposed rule to the legislature for review under s.
25 227.19 (2). The secretary of administration shall direct the department of natural

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1 resources to prepare an economic impact analysis for the proposed rule before
2 submitting the notice of the proposed rule to the legislature for review under s.
3 227.19 (2) if the secretary determines that all of the following apply:

4 (a) The petition was submitted to the department of administration no later
5 than 90 days after publication of the statement of the scope of the proposed rule
6 under s. 227.135 (3) or no later than 10 days after publication of the notice for a public
7 hearing under s. 227.17, whichever is later.

8 (b) The proposed rule would cost affected persons \$20,000,000 or more during
9 each of the first 5 years after the rule's implementation to comply with the rule or the
10 proposed rule would adversely affect in a material way the economy, a sector of the
11 economy, productivity, competition, jobs, the environment, public health or safety, or
12 state, local, or tribal governments or communities.

13 **SECTION 7.** 227.137 (3) (intro.) of the statutes, as affected by 2017 Wisconsin
14 Act 57, is amended to read:

15 227.137 (3) (intro.) An economic impact analysis of a proposed rule prepared
16 under sub. (2) or (4m) shall contain information on the economic effect of the
17 proposed rule on specific businesses, business sectors, public utility ratepayers, local
18 governmental units, and the state's economy as a whole. The agency or person
19 preparing the analysis shall solicit information and advice from businesses,
20 associations representing businesses, local governmental units, and individuals that
21 may be affected by the proposed rule. The agency or person shall prepare the
22 economic impact analysis in coordination with local governmental units that may be
23 affected by the proposed rule. The agency or person may also request information
24 that is reasonably necessary for the preparation of an economic impact analysis from

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1 other businesses, associations, local governmental units, and individuals and from
2 other agencies. The economic impact analysis shall include all of the following:

3 **SECTION 8.** 227.137 (3m) of the statutes is created to read:

4 227.137 (3m) An economic impact analysis of a proposed rule prepared under
5 sub. (2m) shall contain information on the effect of the proposed rule on specific
6 businesses, business sectors, and the state's economy. When preparing the analysis,
7 the department of natural resources shall solicit information and advice from the
8 Wisconsin Economic Development Corporation and from businesses, associations,
9 governmental units, and individuals that may be affected by the proposed rule. The
10 department of natural resources may request information that is reasonably
11 necessary for the preparation of the economic impact analysis from other state
12 agencies and from businesses, associations, governmental units, and individuals.
13 The economic impact analysis shall include all of the following:

14 (a) An analysis and quantification of the problem, including any risks to public
15 health or the environment, that the proposed rule is intending to address.

16 (b) An analysis and quantification of the economic impact of the proposed rule,
17 including the costs that are reasonably expected to be incurred by the state,
18 businesses, governmental units, and affected individuals.

19 (c) An analysis of the benefits of the proposed rule, including how the rule
20 reduces the risks and addresses the problems that the rule is intended to address.

21 **SECTION 9.** 227.137 (4) of the statutes is amended to read:

22 227.137 (4) On the same day that the agency submits ~~the~~ an economic impact
23 analysis prepared under sub. (2) to the legislative council staff under s. 227.15 (1),
24 the agency shall also submit that analysis to the department of administration, to
25 the governor, and to the chief clerks of each house of the legislature, who shall

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1 distribute the analysis to the presiding officers of their respective houses, to the
2 chairpersons of the appropriate standing committees of their respective houses, as
3 designated by those presiding officers, and to the cochairpersons of the joint
4 committee for review of administrative rules. If a proposed rule is modified after the
5 economic impact analysis is submitted under this subsection so that the economic
6 impact of the proposed rule is significantly changed, the agency shall prepare a
7 revised economic impact analysis for the proposed rule as modified. A revised
8 economic impact analysis shall be prepared and submitted in the same manner as
9 an original economic impact analysis is prepared and submitted.

10 **SECTION 10.** 227.137 (4r) of the statutes is created to read:

11 227.137 (4r) The department of natural resources shall submit an economic
12 impact analysis prepared under sub. (2m) to the legislative council staff, to the
13 department of administration, and to the petitioner.

14 **SECTION 11.** 227.14 (2) (a) 6. of the statutes is amended to read:

15 227.14 (2) (a) 6. Any analysis and supporting documentation that the agency
16 used in support of the agency's determination of the rule's effect on small businesses
17 under s. 227.114 or that was used when the agency prepared an economic impact
18 analysis under s. 227.137 ~~(3)~~ (2) or (2m).

19 **SECTION 12.** 227.14 (4m) of the statutes, as affected by 2017 Wisconsin Act 57,
20 is amended to read:

21 227.14 (4m) NOTICE OF SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. On the same
22 day that an agency submits a proposed rule to the legislative council staff under s.
23 227.15, the agency shall prepare a written notice of the agency's submittal to the
24 legislative council staff. The notice shall include a statement of the date on which
25 the proposed rule has been submitted to the legislative council staff for review, of the

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1 subject matter of the proposed rule, and of whether a public hearing on the proposed
2 rule is required under s. 227.16, and shall identify the organizational unit within the
3 agency that is primarily responsible for the promulgation of the rule. The notice
4 shall also include a statement containing the identifying number of the statement
5 of scope for the proposed rule assigned under s. 227.135 (3), the date of publication
6 and issue number of the register in which the statement of scope is published, and
7 the date of approval of the statement of scope by the individual or body with
8 policy-making powers over the subject matter of the proposed rule under s. 227.135
9 (2) or (2m). The notice shall be approved by the individual or body with
10 policy-making powers over the subject matter of the proposed rule. The agency shall
11 send an electronic copy of the notice to the legislative reference bureau, in a format
12 approved by the legislative reference bureau, for publication in the register. On the
13 same day that the agency sends the notice to the legislative reference bureau, the
14 agency shall send a copy of the notice to the secretary of administration.

15 **SECTION 13.** 227.15 (1) of the statutes, as affected by 2017 Wisconsin Act 68,
16 is amended to read:

17 **227.15 (1) SUBMITTAL TO LEGISLATIVE COUNCIL STAFF.** Prior to a public hearing
18 on a proposed rule required under s. 227.16 or, if no such public hearing is required,
19 prior to notice under s. 227.19, an agency shall submit the proposed rule to the
20 legislative council staff for review. The proposed rule shall be in the form required
21 under s. 227.14 (1), and shall include the material required under s. 227.14 (2), (3),
22 and (4), any housing impact analysis required under s. 227.115 (2) (a), any revised
23 housing impact analysis required under s. 227.115 (2) (b), ~~the~~ any economic impact
24 analysis required under s. 227.137 (2) or (2m), and any revised economic impact
25 analysis required under s. 227.137 (4). An agency may not hold a public hearing on

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

6 **SECTION 14.** 227.15 (1m) (bm) of the statutes, as affected by 2017 Wisconsin Act
7 57, is amended to read:

8 227.15 (1m) (bm) The Any economic impact analysis required under s. 227.137
9 (2) or (2m), any revised economic impact analysis required under s. 227.137 (4), and
10 any independent economic impact analysis prepared under s. 227.137 (4m).

11 **SECTION 15.** 227.185 of the statutes, as affected by 2017 Wisconsin Act 57, is
12 amended to read:

13 **227.185 Approval by governor.** ~~After~~ Except as provided in this section,
14 after a proposed rule is in final draft form, the agency shall submit the proposed rule
15 to the governor for approval. The governor, in his or her discretion, may approve or
16 reject the proposed rule. If the governor approves a proposed rule, the governor shall
17 provide the agency with a written notice of that approval. ~~No~~ Except as provided in
18 this section, no proposed rule may be submitted to the legislature for review under
19 s. 227.19 (2) unless the governor has approved the proposed rule in writing. The
20 agency shall notify the joint committee for review of administrative rules whenever
21 it submits a proposed rule for approval under this section. This section does not apply
22 to a proposed rule that is considered at the joint annual spring fish and wildlife rule
23 hearing of the department of natural resources and county meeting of the Wisconsin
24 conservation congress.

25 **SECTION 16.** 227.19 (2) of the statutes is amended to read:

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1 227.19 (2) NOTIFICATION OF LEGISLATURE. An agency shall submit a notice to the
2 chief clerk of each house of the legislature when a proposed rule is in final draft form.
3 The notice shall be submitted in triplicate and shall be accompanied by a report in
4 the form specified under sub. (3). A notice received under this subsection after the
5 last day of the legislature's final general-business floorperiod in the biennial session
6 as established in the joint resolution required under s. 13.02 (3) shall be considered
7 received on the first day of the next regular session of the legislature, unless the
8 presiding officers of both houses direct referral of the notice and report under this
9 subsection before that day. The presiding officer of each house of the legislature
10 shall, within 10 working days following the day on which the notice and report are
11 received, direct the appropriate chief clerk to refer the notice and report to one
12 standing committee. The agency shall submit to the legislative reference bureau for
13 publication in the register, in an electronic format approved by the legislative
14 reference bureau, a statement that a proposed rule has been submitted to the chief
15 clerk of each house of the legislature. The agency shall also include in the statement
16 the date of approval of the proposed rule by the governor under s. 227.185 if the
17 proposed rule is subject to gubernatorial approval. Each chief clerk shall enter a
18 similar statement in the journal of his or her house.

19 **SECTION 17.** 227.19 (3) (intro.) of the statutes, as affected by 2017 Wisconsin
20 Act 57, is amended to read:

21 227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be
22 in writing and shall include the proposed rule in the form specified in s. 227.14 (1);
23 the material specified in s. 227.14 (2), (3), and (4); including any statement,
24 suggested changes, or other material submitted to the agency by the small business
25 regulatory review board; a copy of any economic impact analysis prepared by the

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1 agency under s. 227.137 (2) or (2m); a copy of any revised economic impact analysis
2 prepared by the agency under s. 227.137 (4); a copy of any independent economic
3 impact analysis prepared under s. 227.137 (4m); a copy of any energy impact report
4 received from the public service commission under s. 227.117 (2); and a copy of any
5 recommendations of the legislative council staff. The report shall also include all of
6 the following:

7 **SECTION 18.** 227.24 (1) (e) 1d. of the statutes, as affected by 2017 Wisconsin Act
8 57, is amended to read:

9 227.24 (1) (e) 1d. Prepare Except as provided in s. 227.135 (6), prepare a
10 statement of the scope of the proposed emergency rule as provided in s. 227.135 (1),
11 obtain approval of the statement as provided in s. 227.135 (2), send the statement
12 to the legislative reference bureau for publication in the register as provided in s.
13 227.135 (3), and hold a preliminary public hearing and comment period if directed
14 under s. 227.136 (1). If the agency changes the scope of a proposed emergency rule
15 as described in s. 227.135 (4), the agency shall prepare and obtain approval of a
16 revised statement of the scope of the proposed emergency rule as provided in s.
17 227.135 (4). No state employee or official may perform any activity in connection
18 with the drafting of a proposed emergency rule except for an activity necessary to
19 prepare the statement of the scope of the proposed emergency rule until the governor
20 and the individual or body with policy-making powers over the subject matter of the
21 proposed emergency rule approve the statement.

22 **SECTION 19.** 227.24 (1) (e) 1g. of the statutes is amended to read:

23 227.24 (1) (e) 1g. ~~Submit~~ Except as provided in this subdivision, submit the
24 proposed emergency rule in final draft form to the governor for approval. The
25 governor, in his or her discretion, may approve or reject the proposed emergency rule.

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1 If the governor approves a proposed emergency rule, the governor shall provide the
2 agency with a written notice of that approval. An agency may not file an emergency
3 rule with the legislative reference bureau as provided in s. 227.20 and an emergency
4 rule may not be published until the governor approves the emergency rule in writing.
5 This subdivision does not apply to a proposed emergency rule that is considered at
6 the joint annual spring fish and wildlife rule hearing of the department of natural
7 resources and county meeting of the Wisconsin conservation congress.

SECTION 20. Initial applicability.

9 (1) GUBERNATORIAL APPROVAL OF RULES; SCOPE STATEMENTS. The treatment of
10 sections 227.135 (2), (2m), (3), and (6), 227.14 (4m), 227.185, 227.19 (2), and 227.24
11 (1) (e) 1d. and 1g. of the statutes first applies to a proposed administrative rule whose
12 statement of scope is published in the Wisconsin Administrative Register on the
13 effective date of this subsection.

14 (2) ECONOMIC IMPACT REPORTS. The treatment of sections 227.137 (2), (2m), (3)
15 (intro.), (3m), (4), and (4r), 227.14 (2) (a) 6., 227.15 (1) and (1m) (bm), and 227.19 (3)
16 (intro.) of the statutes first applies to a notice of a proposed administrative rule
17 submitted to the legislature under section 227.19 (2) of the statutes on the effective
18 date of this subsection.

19 (END)