



Stephen L. Nass
Wisconsin State Senator

SB 100 Regulatory Reform: Scope Statement Expiration

Testimony of Senator Steve Nass

Senate Committee on Government Operations, Technology & Consumer
Protection

March 30, 2017 • 411 South, State Capitol

Thank you Chairman Stroebel for holding a public hearing and allowing me to provide testimony in support of Senate Bill 100. This legislation is one step in a number of actions we plan to take this session to reform the regulatory climate in the state of Wisconsin. SB 100 will limit the duration of a scope statement authorizing promulgation of an administrative rule to no more than 30 months.

As co-chairman of the Joint Committee for Review of Administrative Rules (JCRAR), one of my priorities has been to scrutinize new rules to ensure that they are authorized by statute and absolutely necessary to protect the public, so we can reduce the regulatory burden on Wisconsin's citizens and businesses. One of the top concerns cited by many business owners around our state and nationally is the cost and burden of overregulation. In many cases they cite onerous regulations as an even larger problem than tax levels.

Under current law, a state agency must submit a statement of scope to the Governor for approval in order to begin promulgating an administrative rule. The scope statement must outline the objective of the rule, provide a policy analysis of the rule, and demonstrate that the agency has the statutory authority to promulgate the rule. The Governor can either approve the scope statement, allowing the rule process to move forward, or reject it, in which case the agency cannot continue with the new rule.

After the Governor approves a scope statement, it is submitted to the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Register. Once a scope statement is approved under current law, it never expires. The agency can move forward on it at any time in the future, even if it is many years later.

This bill provides for the expiration of a scope statement after 30 months (2.5 years). If an agency wants to move forward with promulgating an administrative rule based on an expired scope statement, the agency would have to resubmit the scope statement for approval by the Governor. Under the bill, all new scope statements will expire 30 months after publication in the Wisconsin Administrative Register. All currently approved scope statements will expire 30 months after the bill is signed into law.

“In God We Trust”

11th Senate District

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Our goal is to have agencies move forward on necessary rules in a timely manner based on current realities, but not indefinitely maintain rulemaking authority many years after the fact, when the underlying conditions that once granted the authority may have significantly changed.

As the JCRAR co-chairman, I have seen a number of examples of state agencies advancing rules on the basis of a scope statement that was approved many, many years ago, by different Legislatures and even a different Governor. In one example, a rule was held so long by the agency that the underlying statute creating the rule had already sunset. In another case, we received a rule in which the scope statement was filed almost 10 years before submittal to the Legislature.

This bill will ensure that all new administrative rules have up-to-date approval from elected officials, are based on current and accurate information, and are acted on in a timely manner. Expiration dates on scope statements will lead to a more transparent and effective rulemaking process by allowing for increased public involvement and greater oversight by elected members of the Legislative and Executive branches.

Thank you again for the opportunity to testify in support of SB 100. If committee members have further questions, I would be happy to answer them at this time.

STATE REPRESENTATIVE
ADAM NEYLON



98TH ASSEMBLY DISTRICT

DATE: March 30, 2017

FROM: State Representative Adam Neylon

TO: Senate Committee on Government Operations, Technology and Consumer Protection

RE: Supporting Senate Bill 100

Chairman Strobel and Members of the Committee, I am here to support legislation Senator Nass and I authored, Senate Bill 100.

As of today, state agency scope statements, which are the first step in the administrative rulemaking process, never expire.

To find an example of this, we can look to just this month when the Department of Natural Resources moved forward with drafting a rule based on a scope statement that was approved in 2007 by then Governor Jim Doyle. You will hear later in this hearing from people representing Wisconsin's business community, who will give you additional examples of stale scope statements being used by agencies to promulgate new administrative rules.

Scope statements act as the foundation that administrative rules are built on by outlining the objective of the forthcoming proposed rule. The statement of scope also provides a policy analysis of the rule, as well as including references to the statutory authority that the agency has to promulgate such a rule.

This bill addresses the problem of scope statements never expiring by sun setting all scope statements 30 months after their submission to the Administrative Register. As for all scope statements that have already been approved, like the one from 2007, the clock on their 30 month sunset will start ticking the day after this bill is signed into law.



**TESTIMONY BEFORE THE SENATE COMMITTEE ON GOVERNMENT
OPERATIONS, TECHNOLOGY AND CONSUMER PROTECTION IN SUPPORT OF
SENATE BILL 100**

Chairman Stroebel and Committee Members:

Thank you for the opportunity to testify today. My name is Lucas Vebber and I am the General Counsel and Director of Environmental and Energy Policy at Wisconsin Manufacturers and Commerce (WMC). WMC is the state's chamber of commerce and manufacturers' association. With approximately 3,800 members, we are the largest business trade association in Wisconsin. WMC represents members from all over Wisconsin of all sizes and in every sector of the state's economy. I am here today to testify in support of Senate Bill 100.

Since the enactment of 2011 Act 21, the Governor has been required to approve all scope statements from administrative agencies. Scope statements then get published in the administrative register to inform the public that a rulemaking process is beginning.

Once agencies have an approved scope statement they can use their rulemaking authority at any time – it never expires. One recent rule took nearly ten years to promulgate after the scope was published. While complex rules often lead to an agency voluntarily convening a technical advisory committee made up of interested members of the public, agencies are only actually required to hold a single public hearing on a proposed rule, after that rule has been drafted.

The longer it gets from the initial publication of a scope statement to the final submission of a draft rule to the legislature, it becomes harder and harder for the public to be engaged and participate in the process. Rule drafts can span multiple legislative cycles and multiple gubernatorial administrations. When a significant regulatory change is pending, the regulatory uncertainty can delay projects and investment.

The Chapter 227 process exists to ensure ample public oversight and transparent rulemaking. Setting an expiration date for scope statements furthers this goal. Here are a few recent examples of rules that have taken significant time to promulgate, creating regulatory uncertainty and confusion:

- On March 15, 2017, DNR submitted Clearing House Rule 16-007 to both houses of the Legislature for review. The scope statement for this rule was published in the Administrative Register on December 1, 2007. That's nearly ten years.
- On March 29, 2016, DNR submitted Clearing House Rule 15-084 to both houses of the Legislature for review. The scope statement for this rule was published in the Administrative Register on February 28, 2011. That's more than five years.

- DNR is currently working on a “package” of three separate rules, which are designed to work together. The first rule in the “package” relates to the procedure for setting site-specific criteria for phosphorous (Scope 046-12, published on July 14, 2012); the other two rules in the “package” relate to changing the designated use designations of surface waters in Wisconsin (Scope 002-14, published on January 14, 2014) and a rule that establishes what biocriteria will be used for water quality standards and to determine phosphorous impacts (Scope 001-14, published January 14, 2012). These rules have not yet been completed, and it is unclear at this time when DNR will finalize them – creating a great deal of uncertainty within the regulated community.

Expiration dates on scope statements will provide certainty to both the agency and the public as to when a rulemaking would end. This will result in a more efficient and effective rulemaking process, and provide more regulatory certainty in Wisconsin.

Thank you and I would be happy to answer any questions that you may have today.