



2015 ASSEMBLY BILL 80

March 5, 2015 - Introduced by Representatives BALLWEG, BERNIER, BORN, R. BROOKS, CZAJA, EDMING, HORLACHER, JACQUE, KLEEFISCH, KNODL, KULP, T. LARSON, LOUDENBECK, MURPHY, MURSAU, PETRYK, QUINN, ROHRKASTE, SPIROS, STEFFEN, TAUCHEN, THIESFELDT and TITTL, cosponsored by Senator NASS. Referred to Committee on State Affairs and Government Operations.

1 **AN ACT to create** 227.26 (4) and 227.29 of the statutes; **relating to:** review by
2 state agencies of administrative rules and enactments and an expedited
3 process for repealing rules an agency no longer has the authority to promulgate.

Analysis by the Legislative Reference Bureau

CURRENT LAW

Current law sets forth the procedure for promulgating administrative rules. Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, 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.

2. The agency drafts the proposed rule, together with an economic impact analysis, plain-language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.

3. Subject to certain exceptions, a public hearing is held on the proposed rule.

4. The final draft of the proposed rule is submitted to the governor for approval.

5. The final draft of the proposed rule, together with the economic impact analysis, plain-language analysis, and fiscal estimate for the proposed rule, are submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules (JCRAR).

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Register, and, subject to certain

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exceptions, the rule becomes effective on the first day of the first month beginning after publication.

THE BILL***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.

Agency review of rules

The bill requires each agency with any rules published in the Wisconsin Administrative Code (code) to annually submit a report to JCRAR listing all of the following rules promulgated or otherwise administered by that agency:

1. Rules for which the authority to promulgate has been eliminated or restricted.

2. Rules that are obsolete or that have been rendered unnecessary.

3. Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a court ruling.

The report must also include 1) a description of the agency's actions, if any, to address each rule listed in the report and, if the agency has not taken any action to address a rule listed in the report, an explanation for not taking action; 2) a description of the status of each rule listed in the previous year's report not otherwise listed; and 3) if the agency determines that there are no such rules to list, a statement of that determination.

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The bill requires the Department of Administration (DOA) to review every enactment of the legislature (act) and, within five days after the date of publication of an act, assign the act for review by each agency that DOA determines may be affected by the act. DOA must notify JCRAR of each such assignment of an act. Upon assignment of an act to an agency by DOA, the agency must review the act and determine whether any part of the act results in any of the following consequences:

1. Eliminates or restricts the agency's authority to promulgate any of the agency's rules.
2. Renders any of the agency's rules obsolete or unnecessary.
3. Renders, for any reason, any of the agency's rules not in conformity with or superseded by a state statute, including due to statutory numbering or terminology changes in the act.
4. Requires or otherwise necessitates rule making by the agency.

If an agency determines that any such consequence results from an act, within 60 days after the act's effective date, the agency must do one or more of the following, as applicable, to address any consequence identified by the agency:

1. Submit a statement of the scope of a proposed rule to address any such consequence to the governor, unless the act requires otherwise or unless the agency submits a notice to JCRAR explaining why it is unable to submit the statement of scope within that time period and an estimate of when the agency plans to submit the statement of scope.
2. Submit a petition to use the expedited procedure described above for repealing an unauthorized rule to the Legislative Council Staff.
3. Submit a request to the LRB for the LRB to use its revision authority to make certain changes to the code.

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.** 227.26 (4) of the statutes is created to read:
- 2 227.26 (4) REPEAL OF UNAUTHORIZED RULES. (a) In this subsection,
- 3 “unauthorized rule” means a rule that an agency lacks the authority to promulgate
- 4 due to the repeal or amendment of the law that previously authorized its
- 5 promulgation.

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1 (b) Notwithstanding ss. 227.114 to 227.117 and 227.135 to 227.19, an agency
2 that promulgated or that otherwise administers a rule that the agency determines
3 is an unauthorized rule may petition the joint committee for review of administrative
4 rules for authorization to repeal that rule by using the following process:

5 1. The agency shall submit a petition with a proposed rule that repeals the rule
6 the agency has determined is an unauthorized rule to the legislative council staff for
7 review. The proposed rule shall be in the form required under s. 227.14 (1) and shall
8 include the material required under s. 227.14 (2) (a) 1., 2., and 7. and a statement that
9 the agency is petitioning the joint committee for review of administrative rules to use
10 the process under this subsection to repeal a rule the agency has determined to be
11 an unauthorized rule.

12 2. The legislative council staff shall review the petition and proposed rule in
13 accordance with s. 227.15 (2) and submit to the joint committee for review of
14 administrative rules the petition and proposed rule with a written report including
15 a statement of its determination as to whether the proposed rule proposes to repeal
16 an unauthorized rule.

17 3. Following receipt of the petition and proposed rule submitted by the
18 legislative council staff under subd. 2., the joint committee for review of
19 administrative rules shall review the petition and proposed rule and may do any of
20 the following:

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

23 b. Deny the agency's petition.

24 c. Request that the agency make changes to the proposed rule and resubmit the
25 petition and proposed rule under subd. 1.

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1 4. The committee shall inform the agency in writing of its decision as to the
2 petition.

3 (c) If the joint committee for review of administrative rules approves a petition
4 to repeal an unauthorized rule as provided in par. (b) 3. a., the agency may
5 promulgate the proposed rule by filing a certified copy of the rule with the legislative
6 reference bureau under s. 227.20, together with a copy of the committee's decision.

7 **SECTION 2.** 227.29 of the statutes is created to read:

8 **227.29 Agency review of rules and enactments. (1)** By March 31 of each
9 odd-numbered year, each agency with any rules published in the code shall submit
10 a report to the joint committee for review of administrative rules listing all of the
11 following rules promulgated or otherwise administered by that agency:

12 (a) Rules for which the authority to promulgate has been eliminated or
13 restricted, together with a description of the legislation that eliminated or restricted
14 that authority.

15 (b) Rules that are obsolete or that have been rendered unnecessary, together
16 with a description of why those rules are obsolete or have been rendered unnecessary.

17 (c) Rules that are duplicative of, superseded by, or in conflict with another rule,
18 a state statute, a federal statute or regulation, or a ruling of a court of competent
19 jurisdiction, together with a citation to or the text of any such statute, regulation, or
20 ruling.

21 **(2)** The report under sub. (1) shall also include all of the following:

22 (a) A description of the agency's actions, if any, to address each rule listed in
23 the report. If the agency has not taken any action to address a rule listed in the
24 report, the agency shall include an explanation for not taking action.

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1 (b) A description of the status of each rule listed in the previous year's report
2 not otherwise listed.

3 (c) If the agency determines that there is no rule as described under sub. (1) (a),
4 (b), or (c), a statement of that determination.

5 **(3)** (a) In this subsection:

6 1. "Date of publication" has the meaning given in s. 35.095 (1) (b).

7 2. "Enactment" means an act or a portion of an act that is required to be
8 published under s. 35.095 (3) (a).

9 (b) The department of administration shall review every enactment and shall,
10 within 5 days after the date of publication of an enactment, assign the enactment for
11 review by each agency that the department of administration determines may be
12 affected by the enactment. The department of administration shall notify the joint
13 committee for review of administrative rules of each assignment of an enactment
14 under this paragraph.

15 (c) Upon assignment of an enactment to an agency by the department of
16 administration under par. (b), the agency shall review the enactment and determine
17 whether any part of the enactment does any of the following:

18 1. Eliminates or restricts the agency's authority to promulgate any rules
19 promulgated or otherwise administered by that agency.

20 2. Renders any rules promulgated or otherwise administered by that agency
21 obsolete or unnecessary.

22 3. Renders, for any reason, any rules promulgated or otherwise administered
23 by that agency not in conformity with or superseded by a state statute, including due
24 to statutory numbering or terminology changes in the enactment.

25 4. Requires or otherwise necessitates rule making by the agency.

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1 (d) If an agency determines that any consequence specified in par. (c) 1. to 4.
2 results from an enactment or part of an enactment, within 60 days after the
3 applicable effective date for the enactment or part of the enactment, the agency shall
4 do one or more of the following, as applicable, to address the consequence identified
5 by the agency and notify the joint committee for review of administrative rules of its
6 action:

7 1. Submit a statement of the scope of a proposed rule under s. 227.135 (2),
8 unless the enactment requires otherwise or unless the agency submits a notice to the
9 committee explaining why it is unable to submit the statement of scope within that
10 time period and an estimate of when the agency plans to submit the statement of
11 scope.

12 2. In the case of an affected rule that the agency determines is an unauthorized
13 rule, as defined in s. 227.26 (4) (a), submit a petition to the legislative council staff
14 under s. 227.26 (4) (b) 1.

15 3. In the case of a consequence specified under par. (c) 3. that can be addressed
16 by the legislative reference bureau using its authority under s. 13.92 (4) (b), submit
17 a request to the legislative reference bureau to use that authority.

18 (END)