



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1046/5
MED:cjs

2015 ASSEMBLY BILL 251

June 4, 2015 - Introduced by Representatives NEYLON, CZAJA, CRAIG, JARCHOW, QUINN, EDMING and BRANDTJEN, cosponsored by Senators LEMAHIEU, NASS, GUDEX, LASEE, ROTH, STROEBEL, TIFFANY and VUKMIR. Referred to Committee on State Affairs and Government Operations.

1 **AN ACT to repeal** 227.137 (6) and (7), 227.17 (3) (em), 227.19 (3) (h), 227.19 (3m),
2 227.24 (3m) (title) and 227.26 (2) (b) (title); **to renumber** 227.10 (2), 227.11 (2)
3 (e) and 227.14 (2g) (a) and (b); **to renumber and amend** 16.28 (1), 227.14 (2g)
4 (intro.), 227.16 (6), 227.185, 227.24 (2) (a), 227.24 (3m) and 227.26 (2) (b); **to**
5 **amend** 13.56 (3), 73.16 (2) (b), 227.11 (title), 227.114 (6), 227.12 (4), 227.13,
6 227.135 (1) (intro.), 227.135 (2), 227.137 (3) (intro.), (a) and (b), 227.137 (4),
7 227.14 (2g) (title), 227.14 (2m), 227.14 (4m), 227.15 (1), 227.15 (1m) (intro.),
8 227.15 (1m) (bm), 227.15 (1m) (c), 227.15 (4), 227.16 (1), 227.16 (2) (d), 227.17
9 (1) (intro.), 227.17 (3) (f), 227.185 (title), 227.19 (2), 227.19 (3) (intro.), 227.19
10 (3) (c), 227.19 (3) (e) (intro.), 227.19 (5) (b) 1. (intro.), 227.22 (2) (e), 227.24 (1)
11 (a), 227.24 (1) (e) 1d., 227.24 (1) (e) 1g., 227.24 (2) (am), 227.24 (3), 227.24 (4)
12 and 227.26 (2) (k); and **to create** 16.28 (1) (b) to (e), 20.505 (1) (ks), 35.93 (2) (b)
13 3. bm., 35.93 (2) (b) 3. gr., 73.17, 227.10 (1m) (b), 227.136, 227.137 (3m), 227.137
14 (4m), 227.139, 227.14 (2) (a) 3m., 227.14 (2g) (c), 227.17 (3) (eg), 227.185 (2),

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- 1 227.19 (5) (b) 3., 227.24 (1m) (intro.) and 227.24 (2) (a) 2. of the statutes;
- 2 **relating to:** various changes regarding administrative rules and rule-making
- 3 procedures; time limits for emergency rules; and making an appropriation.

Analysis by the Legislative Reference Bureau

CURRENT LAW

Permanent rules

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 (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.

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. The agency must also submit a proposed rule that may have an economic impact on small businesses to the Small Business Regulatory Review Board (SBRRB), which must determine whether the proposed rule will have a significant economic impact on a substantial number of small businesses and may make certain other recommendations.

3. Subject to certain exceptions, the agency holds a public hearing on the proposed rule.

4. The final draft of the proposed rule is submitted to the governor for approval who, in his or her discretion, may approve or reject the proposed rule.

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 (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Emergency rules

Under current law, an agency may promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements for permanent rules 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 requirements for permanent rules. An agency must prepare, and obtain approval of, scope statements for emergency rules in the same manner as for permanent rules and must obtain final approval of emergency rules by the governor. In addition, an agency must submit a copy of an emergency rule it promulgates to the SBRRB, which must determine whether it will have a significant

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economic impact on a substantial number of small businesses and make certain other recommendations.

An emergency rule may only remain in effect for 150 days, except that, at the request of an agency, JCRAR may extend the effective period for an emergency rule for one or more periods of up to 60 days each, not to exceed a total of 120 additional days beyond the 150-day period.

THE BILL

The bill makes various changes regarding the rule-making procedures established under current law. Significant changes regarding those procedures are described below.

Role of Office of Business Development and Small Business Regulatory Review Board; impacts on small businesses

The bill requires scope statements for proposed rules, and proposed rules in final draft form, to be submitted to OBD instead of to the governor. Following either submission, the bill requires the OBD to make a determination as to the agency's authority to promulgate the proposed rule and report its determination to the governor, who may then approve or reject the statement of scope or proposed rule as under current law.

The bill also requires proposed rules that under current law must be submitted to the SBRRB to instead be submitted to the OBD. Following the submission, the OBD must make a determination as to whether the proposed rule may have an economic impact on small businesses, and if the OBD so determines, the OBD must submit the proposed rule to the SBRRB for an assessment of the extent of the economic impact.

The bill makes changes regarding the duties of the SBRRB, including requiring the SBRRB to determine whether a proposed rule will have any economic impact on small businesses. The bill requires any determination, notice, or report that the SBRRB is required to submit to an agency to be submitted within 45 days after receipt of the proposed rule from the OBD, except that the bill allows the SBRRB and the agency to extend that time by mutual agreement. The bill also makes other changes regarding the requirements for agencies to complete initial and final regulatory flexibility analyses for proposed rules.

Scope statements; preliminary public hearing and comment period on scope statements

Current law prohibits an agency head from approving a scope statement until at least ten days after publication of the scope statement in the register. The bill eliminates that prohibition.

The bill requires an agency, following approval of a scope statement by the governor, to submit to the LRB a notice of a preliminary public 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. The preliminary public hearing and comment period under the bill is in addition to the public hearing required under current law for certain rules.

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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 do one of the following:

1. Submit a request for JCRAR to introduce a bill authorizing promulgation of the proposed rule, which JCRAR may introduce in its discretion. The agency may resume the rule-making procedure for the proposed rule upon enactment of such a bill.
2. Modify the proposed rule to address the implementation and compliance costs of the proposed rule. If a revised economic impact analysis, as approved by the secretary of revenue, prepared following the modification indicates 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.
3. Withdraw the proposed rule.

Independent economic impact analyses; duties of secretary of revenue

The bill allows the secretary of revenue, or his or her designee (secretary), or a cochairperson of JCRAR, 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 the OBD for final approval, to request that an independent economic impact analysis be prepared for the proposed rule. If the secretary requests an independent economic impact analysis, the request must be submitted to the Department of Administration (DOA), which must then contract for the preparation of the independent economic impact analysis. If a cochairperson of JCRAR requests an independent economic impact analysis, the cochairperson must contract for the preparation of the independent economic impact analysis. The person preparing the independent economic impact analysis must complete the independent economic impact analysis within 60 days after contracting with DOA or the cochairperson 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 OBD for final approval until the agency receives the completed independent economic impact analysis.

Upon completion of an independent economic impact analysis, the person preparing the analysis may submit a request to DOA or JCRAR, whichever is applicable, for reimbursement of its actual and necessary costs of completing the analysis. DOA must assess the agency that is promulgating the proposed rule, in the case of a request by the secretary, for the costs of the independent economic impact analysis. In the case of a request by a cochairperson of JCRAR, the legislature must pay the costs of the independent economic impact analysis.

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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 after JCRAR contracts for the analysis, and JCRAR's review period is extended to the 10th working day following receipt by JCRAR of the completed analysis.

The bill also requires the secretary to do all of the following:

1. Review and approve each initial economic impact analysis prepared by an agency, including by reviewing the economic data and analyses used by the agency in preparing the analysis. If the secretary determines that the agency's analysis does not accurately gauge the economic impact of a proposed rule, the secretary must recommend any modifications to the economic impact analysis that the secretary considers necessary and direct the agency to prepare a revised economic impact analysis for the proposed rule. An agency may not submit a proposed rule to the OBD for final approval unless the secretary has approved the agency's initial or revised economic impact analysis. The secretary 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 he or she 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. 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.

Statements of policy and interpretations

Under current law, if JCRAR determines that a statement of policy or an interpretation of a statute meets the definition of a rule, it may direct the agency to promulgate the statement or interpretation as an emergency rule within 30 days after JCRAR's action.

Under the bill:

1. The OBD has the same power as JCRAR to direct an agency to promulgate a statement of policy or interpretation of a statute as an emergency rule.

2. JCRAR or the OBD must, if requiring the agency to promulgate the statement or interpretation as an emergency rule, also require the agency to promulgate the statement or interpretation as a permanent rule, using the permanent rule-making procedure.

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3. JCRAR or the OBD may, in addition to, or instead of, requiring the agency to promulgate the statement or interpretation as a permanent or emergency rule, prohibit the agency from implementing or enforcing the statement of policy or interpretation until the statement or interpretation is promulgated as a rule or until any such prohibition is rescinded.

Emergency rules

Finally, the bill modifies JCRAR's authority under current law to extend the effective period of an emergency rule so that JCRAR may grant only a single extension of up to 120 days and only before the last floorperiod of the biennial legislative session. 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.

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.** 13.56 (3) of the statutes is amended to read:

2 13.56 (3) POWERS AND DUTIES. The committee has the powers and duties
3 specified under ss. 227.10 (1m), 227.139, 227.19, 227.24, and 227.26.

4 **SECTION 2.** 16.28 (1) of the statutes is renumbered 16.28 (1) (intro.) and
5 amended to read:

6 16.28 (1) (intro.) The office of business development shall provide do all of the
7 following:

8 (a) Provide administrative support to the small business regulatory review
9 board and ~~shall perform.~~

10 (g) Perform other functions determined by the secretary.

11 **SECTION 3.** 16.28 (1) (b) to (e) of the statutes are created to read:

12 16.28 (1) (b) Consult with and provide assistance to agencies and the small
13 business regulatory review board regarding the promulgation of rules.

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1 (c) Receive statements of scope for proposed rules submitted by agencies and
2 make determinations under s. 227.135 (2).

3 (d) Receive rules in final draft form submitted by agencies and make
4 determinations under ss. 227.185 (1) and 227.24 (1m) (b).

5 (e) Review proposed rules for economic impacts on small businesses under ss.
6 227.14 (2g) and 227.24 (1m) (a).

7 **SECTION 4.** 20.505 (1) (ks) of the statutes is created to read:

8 20.505 (1) (ks) *Independent economic analyses for administrative rules.* All
9 moneys received under s. 227.137 (4m) (b) 2. to reimburse persons for conducting
10 independent economic impact analyses under s. 227.137 (4m) (b) 2.

11 **SECTION 5.** 35.93 (2) (b) 3. bm. of the statutes is created to read:

12 35.93 (2) (b) 3. bm. Notices of preliminary public hearings and comment periods
13 under s. 227.136.

14 **SECTION 6.** 35.93 (2) (b) 3. gr. of the statutes is created to read:

15 35.93 (2) (b) 3. gr. Submissions of the small business regulatory review board
16 under ss. 227.14 (2g) and 227.24 (1m) (a).

17 **SECTION 7.** 73.16 (2) (b) of the statutes is amended to read:

18 73.16 (2) (b) The department may retroactively apply any rule change that is
19 related to implementing a legislative act or a final and conclusive decision of the tax
20 appeals commission or the courts to take effect no earlier than the act's effective date
21 or the date on which the decision became final and conclusive, unless otherwise
22 prescribed by the legislature, tax appeals commission, or court, and only if the
23 department submits the rule's scope statement to the governor for approval under
24 s. 227.135 (2) no later than 18 months after the latter of the legislative act's
25 publication date, effective date, or initial applicability date, or the date on which the

ASSEMBLY BILL 251**SECTION 7**

1 decision becomes final and conclusive. A retroactive application of a rule change not
2 described under this paragraph shall be subject to approval under s. 227.185 (1).

3 **SECTION 8.** 73.17 of the statutes is created to read:

4 **73.17 Duties of secretary; rulemaking. (1)** In this section, “agency” has the
5 meaning given in s. 227.01 (1).

6 **(2)** The secretary of revenue shall do all of the following:

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

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

15 (c) Review and approve economic impact analyses as provided under s. 227.137
16 (3m).

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

19 **SECTION 9.** 227.10 (1m) (b) of the statutes is created to read:

20 227.10 **(1m)** (b) Prohibit the agency from implementing or enforcing the
21 statement of policy or interpretation until the statement or interpretation is
22 promulgated as a rule or until any prohibition under this subsection is rescinded.

23 **SECTION 10.** 227.10 (2) of the statutes is renumbered 227.11 (1m).

24 **SECTION 11.** 227.11 (title) of the statutes is amended to read:

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1 **227.11** (title) ~~Extent to which chapter confers~~ **Agency rule-making**
2 **authority.**

3 **SECTION 12.** 227.11 (2) (e) of the statutes is renumbered 227.22 (4).

4 **SECTION 13.** 227.114 (6) of the statutes is amended to read:

5 227.114 (6) ~~When an agency, under s. 227.20 (1), files with the legislative~~
6 ~~reference bureau a rule that is subject to this section, the~~ An agency shall include
7 with the a rule filed with the legislative reference bureau under s. 227.20 (1) a
8 summary of the any analysis prepared under s. 227.19 (3) (e) if required and a
9 summary of the comments of the legislative standing committees, if any. ~~If, under~~
10 ~~s. 227.19 (3m), the rule does not require the analysis under s. 227.19 (3) (e), the~~
11 ~~agency shall include with the rule~~ a the small business regulatory review board's
12 ~~statement of the reason for the small business regulatory review board's~~ its
13 ~~determination that the rule will not have a significant~~ an economic impact on ~~a~~
14 ~~substantial number of small businesses. The legislative reference bureau shall~~
15 ~~publish the~~ any summaries or the statement in the register with the rule.

16 **SECTION 14.** 227.12 (4) of the statutes is amended to read:

17 227.12 (4) If a petition to the department of revenue establishes that the
18 department has established a standard by which it is construing a state tax statute,
19 but has not promulgated a rule to adopt the standard or published the standard in
20 a manner that is available to the public, the department shall, as provided under s.
21 227.135, submit a statement of the scope of the proposed rule to the ~~governor~~ office
22 of business development no later than 90 days after receiving the petition. No later
23 than 270 days after the statement is approved by the governor, the department shall
24 submit the proposed rule in final draft form to the office of business development for
25 review by the office of business development and approval by the governor ~~for the~~

ASSEMBLY BILL 251**SECTION 14**

1 ~~governor's approval~~, as provided under s. 227.185 (1). At the department's request,
2 the ~~governor~~ office of business development may, at any time prior to the expiration
3 of any deadline specified in this subsection, extend the time for submitting the
4 statement or proposed rule in draft form for any period not to exceed ~~60 days~~. ~~The~~
5 ~~governor may grant more than one extension under this subsection, but the total~~
6 ~~period for all such extensions may not exceed 120 days.~~ The office may only grant
7 one extension under this subsection. The rule need not adhere to the standard
8 established by the department, but shall address the same circumstances as the
9 standard addresses. If the department fails to comply with this subsection, any of
10 the petitioners may commence an action in circuit court to compel the department's
11 compliance. If an action is commenced under this subsection, the court may compel
12 the department to provide information to the court related to the degree to which the
13 department is enforcing the standard, except that the information provided by the
14 department shall not disclose the identity of any person who is not a party to the
15 action.

16 **SECTION 15.** 227.13 of the statutes is amended to read:

17 **227.13 Advisory committees and informal consultations.** An agency ~~may~~
18 shall, when possible, use informal conferences and consultations to obtain the
19 viewpoint and advice of interested persons, the office of business development, or
20 members of the small business regulatory review board with respect to contemplated
21 rule making. An agency also may appoint a committee of experts, interested persons,
22 or representatives of the public to advise it with respect to any contemplated rule
23 making. ~~The~~ Such a committee shall have advisory powers only.

24 **SECTION 16.** 227.135 (1) (intro.) of the statutes is amended to read:

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

5 **SECTION 17.** 227.135 (2) of the statutes is amended to read:

6 227.135 (2) An agency that has prepared a statement of the scope of the
7 proposed rule shall present the statement to the ~~governor and to the individual or~~
8 ~~body with policy-making powers over the subject matter of the proposed rule for~~
9 ~~approval~~ office of business development. The office of business development shall
10 make a determination as to the agency's authority to promulgate the rule as proposed
11 in the statement of scope and shall report the statement of scope and its
12 determination to the governor who, in his or her discretion, may approve or reject the
13 statement of scope. The agency may not send the statement to the legislative
14 reference bureau for publication under sub. (3) until the governor issues a written
15 notice of approval of the statement. ~~The individual or body with policy-making~~
16 ~~powers may not approve the statement until at least 10 days after publication of the~~
17 ~~statement under sub. (3).~~ No Except for an activity required to draft a corresponding
18 emergency rule under s. 227.24, no state employee or official may perform any
19 activity in connection with the drafting of a proposed rule except for an activity
20 necessary to prepare the statement of the scope of the proposed rule until the
21 governor ~~and the individual or body with policy-making powers over the subject~~
22 ~~matter of the proposed rule approve~~ approves the statement and the preliminary
23 public hearing and comment period required under s. 227.136 are both concluded.

24 **SECTION 18.** 227.136 of the statutes is created to read:

ASSEMBLY BILL 251**SECTION 18**

1 **227.136 Preliminary public hearing and comment period.** (1) Following
2 approval of a statement of scope by the governor under s. 227.135 (2), other than a
3 revised statement of scope prepared under s. 227.135 (4), the agency shall submit to
4 the legislative reference bureau, in a format approved by the legislative reference
5 bureau, a notice of a preliminary public hearing and comment period to allow for
6 public comment and feedback on the statement of scope. The agency may also take
7 any other action it considers necessary to provide notice of the preliminary public
8 hearing and comment period to other interested persons. The notice shall be
9 approved by the individual or body with policy-making powers over the subject
10 matter of the proposed rule and shall include all of the following:

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

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

14 (2) The agency shall hold the preliminary public hearing and comment period
15 in accordance with the notice required under sub. (1), but the agency may not hold
16 the hearing sooner than the 3rd day after after publication of the notice in the
17 register. The agency shall hold the hearing in accordance with s. 227.18.

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

21 **SECTION 19.** 227.137 (3) (intro.), (a) and (b) of the statutes are amended to read:

22 227.137 (3) (intro.) An economic impact analysis of a proposed rule shall
23 contain information on the economic effect of the proposed rule on specific
24 businesses, business sectors, public utility ratepayers, local governmental units,
25 regulated individuals and entities, and the state's economy as a whole. ~~When~~ The

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1 agency or person preparing the analysis, ~~the agency~~ shall solicit information and
2 advice from businesses, associations representing businesses, local governmental
3 units, and individuals that may be affected by the proposed rule. The agency or
4 person shall prepare the economic impact analysis in coordination with local
5 governmental units that may be affected by the proposed rule. The agency or person
6 may also request information that is reasonably necessary for the preparation of an
7 economic impact analysis from other businesses, associations, local governmental
8 units, and individuals and from other agencies. The economic impact analysis shall
9 include all of the following:

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

17 (b) An analysis and detailed quantification of the economic impact of the
18 proposed rule, including the implementation and compliance costs that are
19 reasonably expected to be incurred by or passed along to the businesses, local
20 governmental units, and individuals that may be affected by the proposed rule,
21 specifically including a determination, for purposes of the requirement under s.
22 227.139, as to whether \$10 million or more in implementation and compliance costs
23 are reasonably expected to be incurred by or passed along to businesses, local
24 governmental units, and individuals over any 2-year period as a result of the
25 proposed rule.

ASSEMBLY BILL 251**SECTION 20**

1 **SECTION 20.** 227.137 (3m) of the statutes is created to read:

2 227.137 (3m) The secretary of revenue shall review each agency's initial
3 economic impact analysis prepared under sub. (2) and determine whether the data
4 used by the agency in preparing the analysis are appropriate for determining the
5 economic impact of the proposed rule and whether the analysis accurately gauges the
6 economic impact of the proposed rule. If the secretary determines that the agency's
7 analysis does not accurately gauge the economic impact of the proposed rule, the
8 secretary shall recommend any modifications to the economic impact analysis that
9 the secretary considers necessary and direct the agency to prepare a revised
10 economic impact analysis as provided in sub. (4). An agency may not submit a
11 proposed rule for approval under s. 227.185 unless the secretary of revenue has
12 approved the agency's initial economic impact analysis or, if the agency prepares a
13 revised economic impact analysis as required under this subsection, unless the
14 secretary of revenue has approved the agency's revised economic impact analysis.
15 The secretary of revenue shall similarly review and approve any revised economic
16 impact analysis submitted under s. 227.139 (1) (b). The secretary of revenue may
17 approve an economic impact analysis only upon determining that the economic
18 impact analysis accurately gauges the economic impact of the proposed rule. The
19 secretary of revenue shall, upon approving an economic impact analysis, submit a
20 statement indicating that approval to the agency.

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

22 227.137 (4) On the same day that the agency submits the economic impact
23 analysis to the legislative council staff under s. 227.15 (1), the agency shall also
24 submit that analysis to the department of administration, to the governor, the
25 secretary of revenue, 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 22.** 227.137 (4m) of the statutes is created to read:

11 227.137 (4m) (a) After an agency submits an economic impact analysis for a
12 proposed rule to the legislature under sub. (4), but before the agency submits the
13 proposed rule for approval under s. 227.185 (1), the secretary of revenue or either
14 cochairperson of the joint committee for review of administrative rules may request
15 an independent economic impact analysis to be prepared for the proposed rule.

16 (b) 1. If the secretary of revenue requests an independent economic impact
17 analysis under par. (a), the secretary shall submit the request to the department of
18 administration and so notify the agency proposing the proposed rule. The
19 department of administration shall contract with a person that is not an agency to
20 prepare the independent economic impact analysis. If a cochairperson of the joint
21 committee for review of administrative rules requests an independent economic
22 impact analysis under par. (a), the cochairperson shall notify the agency proposing
23 the proposed rule and shall contract with a person that is not an agency to prepare
24 the independent economic impact analysis.

ASSEMBLY BILL 251**SECTION 22**

1 2. Upon completion of an independent economic impact analysis requested by
2 the secretary of revenue, the person preparing the analysis may submit a request to
3 the department of administration for reimbursement of its actual and necessary
4 costs of completing the analysis, and the department of administration shall assess
5 the agency that is proposing the proposed rule for those costs. The department of
6 administration shall credit all moneys received under this subdivision to the
7 appropriation account under s. 20.505 (1) (ks) and shall reimburse a person who
8 submits a request for reimbursement under this subdivision from the appropriation
9 account under s. 20.505 (1) (ks).

10 3. Upon completion of an independent economic impact analysis requested by
11 a cochairperson of the joint committee for review of administrative rules, the person
12 preparing the analysis may submit a request to the committee for reimbursement of
13 its actual and necessary costs of completing the analysis. The committee shall
14 reimburse a person who submits a request for reimbursement under this subdivision
15 in equal parts from the appropriation accounts under s. 20.765 (1) (a) and (b).

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

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

19 2. Upon completion of the analysis, submit the analysis to the agency, to the
20 department of administration, to the secretary of revenue, to the office of business
21 development, to the governor, and to the chief clerks of each house of the legislature,
22 who shall distribute the analysis to the presiding officers of their respective houses,
23 to the chairpersons of the appropriate standing committees of their respective
24 houses, as designated by those presiding officers, and to the cochairpersons of the
25 joint committee for review of administrative rules.

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

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

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

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

8 **227.139 Passage of bill required for certain rules.** (1) If an economic
9 impact analysis prepared under s. 227.137 (2), a revised economic impact analysis
10 prepared under s. 227.137 (4), or an independent economic impact analysis prepared
11 under s. 227.137 (4m) or 227.19 (5) (b) 3. indicates that \$10 million or more in
12 implementation and compliance costs are reasonably expected to be incurred by or
13 passed along to businesses, local governmental units, and individuals over any
14 2-year period as a result of the proposed rule, the agency proposing the rule shall
15 stop work on the proposed rule and take no further action regarding the proposed
16 rule, except that the agency shall do one of the following:

17 (a) Submit a request to the joint committee for review of administrative rules
18 for the committee to introduce a bill authorizing promulgation of the proposed rule.
19 The committee may, in its discretion, introduce such a bill authorizing promulgation
20 of the proposed rule. The agency may resume the rule-making process as provided
21 in this subchapter upon enactment of a bill introduced under this paragraph.

22 (b) Modify the proposed rule, if the modification is germane to the subject
23 matter of the proposed rule, to address the implementation and compliance costs of
24 the proposed rule. If the agency modifies a proposed rule under this paragraph, the
25 agency shall prepare a revised economic impact analysis under s. 227.137 (4) and

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1 submit the revised economic impact analysis to the secretary of revenue for approval
2 under s. 227.137 (3m). If the revised economic impact analysis, as approved by the
3 secretary of revenue, indicates that \$10 million or more in implementation and
4 compliance costs are not reasonably expected to be incurred by or passed along to
5 businesses, local governmental units, and individuals over any 2-year period as a
6 result of the proposed rule, the agency may continue with the rule-making process
7 as provided in this subchapter.

8 (c) Withdraw the proposed rule as provided in s. 227.14 (6).

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

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

11 227.14 (2) (a) 3m. A summary of any public comments and feedback on the
12 statement of scope of the proposed rule that the agency received at the preliminary
13 public hearing and comment period under s. 227.136 and a description of how and
14 to what extent the agency took those comments and that feedback into account in
15 drafting the proposed rule.

16 **SECTION 26.** 227.14 (2g) (title) of the statutes is amended to read:

17 227.14 (2g) (title) REVIEW BY THE OFFICE OF BUSINESS DEVELOPMENT AND SMALL
18 BUSINESS REGULATORY REVIEW BOARD.

19 **SECTION 27.** 227.14 (2g) (intro.) of the statutes is renumbered 227.14 (2g) (am)
20 and amended to read:

21 227.14 (2g) (am) On the same day that an agency submits a proposed rule to
22 the legislative council staff under s. 227.15 ~~a proposed rule that may have an~~
23 ~~economic impact on small businesses~~, the agency shall submit the proposed rule, the
24 analysis required under sub. (2), and a description of its actions taken to comply with
25 s. 227.114 (2) and (3) to the ~~small business regulatory review board.~~ The office of

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1 business development, which shall make a determination as to whether the proposed
2 rule may have an economic impact on small businesses, as defined in s. 227.114 (1).
3 The office shall, when appropriate consult with individual members of the small
4 business regulatory review board in making that determination and shall report its
5 determination to the agency. If the office of business development determines that
6 the proposed rule may have an economic impact on small businesses, it shall submit
7 the proposed rule to the small business regulatory review board for an assessment
8 of the extent of the economic impact.

9 (bm) In making an assessment required under par. (am), the small business
10 regulatory review board may use cost-benefit analysis to determine the fiscal effect
11 of the rule on small businesses and shall determine whether the proposed rule will
12 have a significant an economic impact on a substantial number of small businesses
13 and whether the agency has complied with subs. (2) and (2m) and s. 227.114 (2) and
14 (3). Except as provided in subs. (1m) and (1s), each proposed rule shall include
15 provisions detailing how the rule will be enforced. If the board determines that the
16 rule does not include an enforcement provision or that the agency failed to comply
17 with sub. (2) or (2m) or s. 227.114 (2) or (3), the board shall notify the agency of that
18 determination and ask the agency to comply with any of those requirements. If the
19 board determines that the proposed rule will not have a significant an economic
20 impact on a substantial number of small businesses, the board shall submit to the
21 agency a statement to that effect to the agency that sets forth, which shall include
22 the reason for the board's decision determination. If the board determines that the
23 proposed rule will have a significant an economic impact on a substantial number
24 of small businesses, the board may submit to the agency suggested changes in the
25 proposed rule to minimize the any negative economic impact of the proposed rule, or

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1 may recommend the withdrawal of the proposed rule under sub. (6). In addition, the
2 board may submit other suggested changes in the proposed rule to the agency,
3 including proposals to reduce the use of cross-references in the rule. The submission
4 to the agency may also include a request that the agency do any of the following:

5 (d) The small business regulatory review board shall send a report of any
6 suggested changes and of any notice of failure to include enforcement provisions or
7 to comply with sub. (2) or (2m) or s. 227.114 (2) or (3) a copy of any submission under
8 this subsection to the legislative reference bureau for publication in the register, in
9 an electronic format approved by the legislative reference bureau, and to the
10 legislative council staff. The notification to the agency may include a request that
11 the agency do any of the following:

12 **SECTION 28.** 227.14 (2g) (a) and (b) of the statutes are renumbered 227.14 (2g)
13 (bm) 1. and 2.

14 **SECTION 29.** 227.14 (2g) (c) of the statutes is created to read:

15 227.14 **(2g)** (c) The small business regulatory review board shall make a
16 submission to an agency under this subsection within 45 days after receipt of a
17 proposed rule from the office of business development, except that the board and the
18 agency may extend that period by mutual agreement. The agency may not submit
19 the proposed rule for approval under s. 227.185 (1) until the agency receives the
20 board's submission or until the expiration of that period, whichever occurs first. If,
21 upon the expiration of that period, the agency has not received any submission from
22 the board, the agency is not required to comply with s. 227.19 (3) (e).

23 **SECTION 30.** 227.14 (2m) of the statutes is amended to read:

24 227.14 **(2m)** **QUALITY OF AGENCY DATA AND REDUCTION OF CROSS REFERENCES.** Each
25 agency shall, in cooperation with the department of administration, the office of

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1 business development, and the secretary of revenue, ensure the accuracy, integrity,
2 objectivity, and consistency of the data that is used when preparing a proposed rule
3 and when completing an analysis of the proposed rule under sub. (2). Each agency
4 shall reduce the amount of cross-references to the statutes in proposed and final
5 rules. A person affected by a proposed rule may submit comments to the agency
6 regarding the accuracy, integrity, or consistency of that data.

7 **SECTION 31.** 227.14 (4m) of the statutes is amended to read:

8 227.14 (4m) NOTICE OF SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. On the same
9 day that an agency submits a proposed rule to the legislative council staff under s.
10 227.15, the agency shall prepare a written notice of the agency's submittal to the
11 legislative council staff. The notice shall include a statement of the date on which
12 the proposed rule has been submitted to the legislative council staff for review, of the
13 subject matter of the proposed rule, and of whether a public hearing on the proposed
14 rule is required under s. 227.16, and shall identify the organizational unit within the
15 agency that is primarily responsible for the promulgation of the rule. The notice
16 shall also include a statement containing the identifying number of the statement
17 of scope for the proposed rule assigned under s. 227.135 (3), and the date of
18 publication and issue number of the register in which the statement of scope is
19 published, ~~and the date of approval of the statement of scope by the individual or~~
20 ~~body with policy-making powers over the subject matter of the proposed rule under~~
21 ~~s. 227.135 (2)~~. The notice shall be approved by the individual or body with
22 policy-making powers over the subject matter of the proposed rule. The agency shall
23 send an electronic copy of the notice to the legislative reference bureau, in a format
24 approved by the legislative reference bureau, for publication in the register. On the

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1 same day that the agency sends the notice to the legislative reference bureau, the
2 agency shall send a copy of the notice to the secretary of administration.

3 **SECTION 32.** 227.15 (1) of the statutes is amended to read:

4 227.15 (1) SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. Prior to a public hearing
5 on a proposed rule required under s. 227.16 or, if no such public hearing is required,
6 prior to notice under s. 227.19, an agency shall submit the proposed rule to the
7 legislative council staff for review. The proposed rule shall be in the form required
8 under s. 227.14 (1), and shall include the material required under s. 227.14 (2), (3),
9 and (4), the economic impact analysis required under s. 227.137 (2), and any revised
10 economic impact analysis required under s. 227.137 (4). An agency may not hold a
11 public hearing on a proposed rule or give notice under s. 227.19 until after it has
12 received a written report of the legislative council staff review of the proposed rule
13 or until after the initial review period of 20 working days under sub. (2) (intro.),
14 whichever comes first. An agency may give notice of a public hearing prior to receipt
15 of the legislative council staff report. This subsection does not apply to rules
16 promulgated under s. 227.24.

17 **SECTION 33.** 227.15 (1m) (intro.) of the statutes is amended to read:

18 227.15 (1m) INTERNET ACCESS TO PROPOSED RULE. (intro.) The legislative council
19 staff shall create and maintain an Internet site that includes a copy of or link to each
20 proposed rule received under sub. (1) in a format that allows searching using
21 keywords. Each agency shall provide the legislative council staff with the proposed
22 rules and other information needed to comply with this subsection in the format
23 required by the legislative council staff. The Internet site shall ~~identify or provide~~
24 ~~a link to a site that identifies proposed rules affecting small businesses, as defined~~

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1 ~~in s. 227.114 (1).~~ The Internet site shall also include or provide a link to all of the
2 following:

3 **SECTION 34.** 227.15 (1m) (bm) of the statutes is amended to read:

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

7 **SECTION 35.** 227.15 (1m) (c) of the statutes is amended to read:

8 227.15 **(1m)** (c) Any ~~report submitted~~ submission to the legislative council staff
9 under s. 227.14 (2g).

10 **SECTION 36.** 227.15 (4) of the statutes is amended to read:

11 227.15 **(4)** NOTICE OF CHANGES IN RULE-MAKING AUTHORITY. Whenever the
12 rule-making authority of an agency is eliminated or significantly changed by the
13 repeal, amendment, or creation of a statute, by the interpretive decision of a court
14 of competent jurisdiction or for any other reason, the legislative council staff shall
15 notify the joint committee for review of administrative rules ~~and,~~ the appropriate
16 committees of each house of the legislature as determined by the presiding officer of
17 each house, and the office of business development. This subsection applies whether
18 or not the rules of the agency are under review by the legislative council staff at the
19 time of the change in rule-making authority.

20 **SECTION 37.** 227.16 (1) of the statutes is amended to read:

21 227.16 **(1)** ~~Except as provided under sub. (2)~~ In addition to the preliminary
22 public hearing and comment period required under s. 227.136, all rule making by an
23 agency shall be preceded by notice and public hearing as provided in ss. 227.17 and
24 227.18, except as provided in sub. (2).

25 **SECTION 38.** 227.16 (2) (d) of the statutes is amended to read:

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1 227.16 (2) (d) The proposed rule is being promulgated at the direction of the
2 joint committee for review of administrative rules or the office of business
3 development under s. ~~227.26 (2) (b)~~ 227.10 (1m).

4 **SECTION 39.** 227.16 (6) of the statutes is renumbered 227.136 (4) and amended
5 to read:

6 227.136 (4) For the purpose of soliciting public comment, an agency may, in
7 addition to the preliminary public hearing and comment period required under this
8 section, hold a hearing on the general subject matter of possible or anticipated rules
9 before preparing a proposed rule in draft form. A hearing held under this subsection
10 does not satisfy the requirement of ~~sub. under s. 227.16~~ (1) with respect to the
11 promulgation of a specific proposed rule.

12 **SECTION 40.** 227.17 (1) (intro.) of the statutes is amended to read:

13 227.17 (1) (intro.) If a hearing is required under s. 227.16, the agency shall do
14 all of the following:

15 **SECTION 41.** 227.17 (3) (eg) of the statutes is created to read:

16 227.17 (3) (eg) Any independent economic impact analysis prepared under s.
17 227.137 (4m).

18 **SECTION 42.** 227.17 (3) (em) of the statutes is repealed.

19 **SECTION 43.** 227.17 (3) (f) of the statutes is amended to read:

20 227.17 (3) (f) ~~If the proposed rule will have an effect on small businesses, as~~
21 ~~defined under s. 227.114 (1), an initial regulatory flexibility analysis, which shall~~
22 ~~contain a~~ A description of the types of small businesses that will the agency
23 determines may be affected by the rule, a brief description of the proposed reporting,
24 bookkeeping, and other procedures required for compliance with the rule, and a
25 description of the types of professional skills necessary for compliance with the rule.

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1 **SECTION 44.** 227.185 (title) of the statutes is amended to read:

2 **227.185 (title) Approval Submission to office of business development;**
3 **approval by governor.**

4 **SECTION 45.** 227.185 of the statutes is renumbered 227.185 (1) and amended
5 to read:

6 227.185 (1) After a proposed rule is in final draft form, the agency shall submit
7 the proposed rule to the ~~governor for approval~~ office of business development, which
8 shall make a determination as to the agency's authority to promulgate the proposed
9 rule. The office of business development shall report the proposed rule and its
10 determination to the governor, who, in his or her discretion, may approve or reject
11 the proposed rule. If the governor approves a proposed rule, the governor shall
12 provide the agency with a written notice of that approval accompanied by a copy of
13 the determination of the office of business development. No proposed rule may be
14 submitted to the legislature for review under s. 227.19 (2) unless the governor has
15 approved the proposed rule in writing. The agency shall notify the secretary of
16 revenue and the joint committee for review of administrative rules whenever it
17 submits a proposed rule for approval under this subsection.

18 **SECTION 46.** 227.185 (2) of the statutes is created to read:

19 227.185 (2) (a) If an agency makes a germane modification to a proposed rule
20 at any time during the legislative review process under s. 227.19, the agency shall
21 submit the modification to the governor for approval. The governor, in his or her
22 discretion, may approve or reject the modification. If the governor approves a
23 modification, he or she shall provide the agency with a written notice of that
24 approval. If the governor does not approve the modification, the agency may not

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1 promulgate the proposed rule, except that the agency may resubmit the proposed
2 rule to the legislature as provided in s. 227.19 without the modification.

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

5 **SECTION 47.** 227.19 (2) of the statutes is amended to read:

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

23 **SECTION 48.** 227.19 (3) (intro.) of the statutes is amended to read:

24 227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be
25 in writing and shall include the proposed rule in the form specified in s. 227.14 (1);

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1 the material specified in s. 227.14 (2), (3), and (4); including any statement,
2 suggested changes, or other material submitted to the agency by the small business
3 regulatory review board; a copy of any economic impact analysis prepared by the
4 agency under s. 227.137 (2); a copy of any revised economic impact analysis prepared
5 by the agency under s. 227.137 (4); a copy of any report prepared by the department
6 of administration under s. 227.137 (6); independent economic impact analysis
7 prepared under s. 227.137 (4m); a copy of any energy impact report received from the
8 public service commission under s. 227.117 (2); and a copy of any recommendations
9 of the legislative council staff. The report shall also include all of the following:

10 **SECTION 49.** 227.19 (3) (c) of the statutes is amended to read:

11 227.19 (3) (c) A list of the persons who appeared or registered for or against the
12 proposed rule at a public hearing held as required under s. 227.136 or 227.16.

13 **SECTION 50.** 227.19 (3) (e) (intro.) of the statutes is amended to read:

14 227.19 (3) (e) (intro.) ~~Except as provided under sub. (3m), for all proposed rules~~
15 ~~that will have an effect on~~ Except as provided in s. 227.14 (2g) (c), if the small
16 business regulatory review board determines the proposed rule will have an
17 economic impact on small businesses, as defined under s. 227.114 (1) under s. 227.14
18 (2g) (bm), a final regulatory flexibility analysis, which shall contain a response to the
19 board's report and as much information about the following as the agency can
20 feasibly obtain and analyze with its existing staff and resources:

21 **SECTION 51.** 227.19 (3) (h) of the statutes is repealed.

22 **SECTION 52.** 227.19 (3m) of the statutes is repealed.

23 **SECTION 53.** 227.19 (5) (b) 1. (intro.) of the statutes is amended to read:

24 227.19 (5) (b) 1. (intro.) ~~Except as provided in subd. 1m. this paragraph,~~ the
25 review period for the joint committee for review of administrative rules extends for

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1 30 days after the last referral of a proposed rule and any objection to that committee,
2 and during that review period that committee may take any action on the proposed
3 rule in whole or in part permitted under this subsection. The joint committee for
4 review of administrative rules shall meet and take action in executive session during
5 that period with respect to any proposed rule or any part of a proposed rule to which
6 a committee has objected and may meet and take action in executive session during
7 that period with respect to any proposed rule or any part of a proposed rule to which
8 no committee has objected, except that if the cochairpersons take either of the
9 following actions within the 30-day period, the joint committee review period is
10 continued for 30 days from the date on which the first 30-day review period would
11 have expired:

12 **SECTION 54.** 227.19 (5) (b) 3. of the statutes is created to read:

13 227.19 (5) (b) 3. The joint committee for review of administrative rules, by a
14 majority vote of a quorum of the committee, may request the preparation of an
15 independent economic impact analysis for a proposed rule, regardless of whether an
16 independent economic impact analysis was prepared under s. 227.137 (4m). If the
17 joint committee for review of administrative rules requests an independent economic
18 impact analysis under this subdivision, the committee shall notify the agency
19 proposing the proposed rule and shall contract with a person that is not an agency
20 to prepare the independent economic impact analysis. The person preparing the
21 independent economic impact analysis shall comply with s. 227.137 (4m) (c) 1. and
22 2. and complete the independent economic impact analysis within 60 days after
23 contracting for the preparation of the analysis. Upon completion of an independent
24 economic impact analysis requested under this subdivision, the person preparing the
25 analysis may submit a request to the committee for reimbursement of its actual and

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1 necessary costs of completing the analysis. The committee shall reimburse a person
2 who submits a request for reimbursement under this subdivision in equal parts from
3 the appropriation accounts under s. 20.765 (1) (a) and (b). If the committee requests
4 an independent economic impact analysis under this subdivision, the review period
5 for the committee is extended to the 10th working day following receipt by the
6 committee of the completed analysis.

7 **SECTION 55.** 227.22 (2) (e) of the statutes is amended to read:

8 227.22 (2) (e) The small business regulatory review board has determined
9 under s. 227.14 (2g) (bm) that the rule has a significant will have an economic impact
10 on small businesses, as defined in s. 227.114 (1), in which case the rule applies to
11 small businesses no earlier than the first day of the 3rd month commencing after the
12 date of publication of the rule.

13 **SECTION 56.** 227.24 (1) (a) of the statutes is amended to read:

14 227.24 (1) (a) An agency may promulgate a rule as an emergency rule without
15 complying with the notice, hearing, and publication requirements under this
16 chapter, other than the requirements under par. (e) 1d., if preservation of the public
17 peace, health, safety, or welfare necessitates putting the rule into effect prior to the
18 time it would take effect if the agency complied with the procedures.

19 **SECTION 57.** 227.24 (1) (e) 1d. of the statutes is amended to read:

20 227.24 (1) (e) 1d. Prepare a statement of the scope of the proposed emergency
21 rule as provided in s. 227.135 (1), obtain approval of the statement as provided in s.
22 227.135 (2), ~~and~~ send the statement to the legislative reference bureau for
23 publication in the register as provided in s. 227.135 (3), and hold a preliminary public
24 hearing and comment period as provided in s. 227.136. If the agency changes the
25 scope of a proposed emergency rule as described in s. 227.135 (4), the agency shall

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1 prepare and obtain approval of a revised statement of the scope of the proposed
2 emergency rule as provided in s. 227.135 (4). No state employee or official may
3 perform any activity in connection with the drafting of a proposed emergency rule
4 except for an activity necessary to prepare the statement of the scope of the proposed
5 emergency rule until the governor ~~and the individual or body with policy-making~~
6 ~~powers over the subject matter of the proposed emergency rule approve~~ approves the
7 statement.

8 **SECTION 58.** 227.24 (1) (e) 1g. of the statutes is amended to read:

9 227.24 (1) (e) 1g. Submit the proposed emergency rule in final draft form to the
10 ~~governor for approval~~ office of business development for review under sub. (1m).

11 (1m) (b) Make a determination as to the agency's authority to promulgate the
12 proposed rule. The office of business development shall report its determination
13 under this paragraph to the governor, who, in his or her discretion, may approve or
14 reject the proposed emergency rule. If the governor approves a proposed emergency
15 rule, the governor shall provide the agency with a written notice of that approval
16 accompanied by a copy of the determination of office of business development. An
17 agency may not file an emergency rule with the legislative reference bureau as
18 provided in s. 227.20 and an emergency rule may not be published until the governor
19 approves the emergency rule in writing.

20 **SECTION 59.** 227.24 (1m) (intro.) of the statutes is created to read:

21 227.24 (1m) FINAL REVIEW OF RULE. (intro.) Upon receipt of an emergency rule
22 under sub. (1) (e) 1g., the office of business development shall do all of the following:

23 **SECTION 60.** 227.24 (2) (a) of the statutes is renumbered 227.24 (2) (a) (intro.)
24 and amended to read:

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

5 1. At any time on or before the last day of the legislature's final
6 general-business floorperiod in the biennial session as established in the joint
7 resolution required under s. 13.02 (3), for a period specified by the committee not to
8 exceed 60 days. Any number of extensions may be granted under this paragraph, but
9 the total period for all extensions may not exceed 120 days. The committee may not
10 grant more than one extension under this subdivision.

11 **SECTION 61.** 227.24 (2) (a) 2. of the statutes is created to read:

12 227.24 (2) (a) 2. Within 30 days before the last day of the legislature's final
13 general-business floorperiod in the biennial session as established in the joint
14 resolution required under s. 13.02 (3), for a period specified by the committee that
15 does not extend beyond March 31 of the following year. An extension under this
16 subdivision may be in addition to, and may overlap with, an extension granted under
17 subd. 1.

18 **SECTION 62.** 227.24 (2) (am) of the statutes is amended to read:

19 227.24 (2) (am) Any request by an agency to extend the effective period of the
20 emergency rule or part of the emergency rule shall be made in writing to the joint
21 committee for review of administrative rules no later than 30 days before the initial
22 expiration date of the emergency rule.

23 **SECTION 63.** 227.24 (3) of the statutes is amended to read:

24 227.24 (3) FILING. An agency shall file a rule promulgated under sub. (1) as
25 provided in s. 227.20, shall mail a copy to the chief clerk of each house and to each

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1 member of the legislature at the time that the rule is filed, and shall take any other
2 step it considers feasible to make the rule known to persons who will be affected by
3 it. The legislative reference bureau shall insert in the notice section of each issue of
4 the register a brief description of each rule under sub. (1) that is currently in effect,
5 and a copy of the rule and fiscal estimate. Each copy, notice, or description of a rule
6 promulgated under sub. (1) (a) shall be accompanied by a statement of the emergency
7 finding by the agency or by a statement that the rule is promulgated at the direction
8 of the joint committee for review of administrative rules or the office of business
9 development under s. ~~227.26 (2) (b)~~ 227.10 (1m).

10 **SECTION 64.** 227.24 (3m) (title) of the statutes is repealed.

11 **SECTION 65.** 227.24 (3m) of the statutes is renumbered 227.24 (1m) (a), and
12 227.24 (1m) (a) (intro.), as renumbered, is amended to read:

13 227.24 **(1m)** (a) (intro.) ~~On the same day that the agency files a rule under sub.~~
14 ~~(3) that~~ Make a determination as to whether the rule may have an economic impact
15 on small businesses, as defined in s. 227.114 (1), the agency shall submit a copy of
16 the rule to the small business regulatory review board. The board office of business
17 development shall, when appropriate, consult with individual members of the small
18 business regulatory review board in making that determination and shall report its
19 determination to the agency. If the office of business development determines that
20 the proposed rule may have an economic impact on small businesses, it shall submit
21 the proposed rule to the small business regulatory review board for an assessment
22 of the extent of the economic impact. In making that assessment, the board may use
23 cost-benefit analysis to determine the fiscal effect of the emergency rule on small
24 businesses and shall determine whether the emergency rule will have a significant
25 an economic impact on a substantial number of small businesses and whether the

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1 agency complied with ss. 227.114 (2) and (3) and 227.14 (2m). If the board determines
2 that the emergency rule will not have ~~a significant~~ an economic impact on ~~a~~
3 ~~substantial number of~~ small businesses, the board shall submit to the agency a
4 statement to that effect ~~to the agency that sets forth, which shall include~~ the reason
5 for the board's ~~decision~~ determination. If the board determines that the emergency
6 rule will have ~~a significant~~ an economic impact on ~~a substantial number of~~ small
7 businesses, the board may submit to the agency and to the legislative council staff
8 suggested changes in the emergency rule to minimize ~~the~~ any negative economic
9 impact of the emergency rule. If the board determines that the agency failed to
10 comply with s. 227.114 (2) or (3) or 227.14 (2m), the board shall notify the agency of
11 that determination and ask the agency to comply with any of those provisions. In
12 addition, the board may submit other suggested changes in the proposed rule to the
13 agency ~~and~~. The board shall send a copy of any submission under this paragraph to
14 the legislative reference bureau for publication in the register, in an electronic
15 format approved by the legislative reference bureau. The submission to the agency
16 may include a request that the agency do any of the following:

17 **SECTION 66.** 227.24 (4) of the statutes is amended to read:

18 227.24 (4) PUBLIC HEARING. Notwithstanding sub. (1) (a) and (b) and in addition
19 to the preliminary public hearing and comment period required under sub. (1) (e) 1d.,
20 an agency shall hold a public hearing within 45 days after it promulgates a rule
21 under sub. (1). If within that 45-day period the agency submits to the legislative
22 council staff under s. 227.15 a proposed rule corresponding to the rule under sub. (1),
23 it shall hold a public hearing on both rules within 90 days after promulgation of the
24 rule under sub. (1), or within 30 days after the agency receives the report on the

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1 proposed rule prepared by the legislative council under s. 227.15 (2), whichever
2 occurs later.

3 **SECTION 67.** 227.26 (2) (b) (title) of the statutes is repealed.

4 **SECTION 68.** 227.26 (2) (b) of the statutes is renumbered 227.10 (1m) and
5 amended to read:

6 227.10 (1m) If the joint committee for review of administrative rules or the
7 office of business development determines that a statement of policy or an
8 interpretation of a statute meets the definition of a rule, ~~it~~ the committee or the office
9 of business development may direct do any of the following:

10 (a) Direct the agency to promulgate the statement or interpretation as an
11 emergency rule under s. 227.24 (1) (a) within 30 days after the committee's or office's
12 action and to promulgate the statement or interpretation as a permanent rule using
13 the rule-making process under this subchapter.

14 **SECTION 69.** 227.26 (2) (k) of the statutes is amended to read:

15 227.26 (2) (k) *Biennial report.* The committee shall submit a biennial report
16 of its activities under this section and s. 227.10 (1m) to the chief clerk of each house
17 of the legislature, for distribution to the legislature under s. 13.172 (2), and to the
18 governor and include recommendations.

19 **SECTION 70. Initial applicability.**

20 (1) The treatment of sections 35.93 (2) (b) 3. bm. and gr., 73.17 (2) (d), 227.114
21 (6), 227.135 (1) (intro.) and (2), 227.136, 227.137 (3) (intro.), (a), and (b), 227.137 (4m),
22 (6), and (7), 227.139, 227.14 (2) (a) 3m., (2g) (title), (intro.), (a), (b), and (c), (2m), and
23 (4m), 227.15 (1) and (1m) (intro.), (bm), and (c), 227.16 (1) and (6), 227.17 (1) (intro.)
24 and (3) (eg), (em), and (f), 227.19 (2), (3) (intro.), (c), (e) (intro.), and (h), (3m), and (5)
25 (b) 1. (intro.) and 3., 227.22 (2) (e), and 227.24 (1) (a) and (e) 1d. and 1g., (1m) (intro.),

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1 (2) (am), and (4) of the statutes, the repeal of section 227.24 (3m) (title) of the statutes,
2 the renumbering and amendment of sections 16.28 (1), 227.185, and 227.24 (2) (a)
3 and (3m) of the statutes, the amendment of section 227.185 (title) of the statutes, and
4 the creation of sections 16.28 (1) (b) to (e), 227.185 (2), and 227.24 (2) (a) 2. of the
5 statutes first apply to a proposed rule or emergency rule whose statement of scope
6 is presented for approval under section 227.135 (2) of the statutes on the effective
7 date of this subsection.

8 (2) The treatment of sections 73.17 (title), (1), and (2) (intro.), (a), (b), and (c)
9 and 227.137 (3m) and (4) of the statutes first applies to a proposed rule or emergency
10 rule whose statement of scope is presented for approval under section 227.135 (2) of
11 the statutes on the effective date of this subsection.

12 **SECTION 71. Effective dates.** This act takes effect on January 1, 2016, or on
13 the day after publication, whichever is later, except as follows:

14 (1) The treatment of sections 73.17 (title), (1), and (2) (intro.), (a), (b), and (c)
15 and 227.137 (3m) and (4) of the statutes and SECTION 70 (2) of this act take effect on
16 August 1, 2015, or on the day after publication, whichever is later.

17 **(END)**