



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6076/1
ALL:all

2017 SENATE BILL 884

December 3, 2018 - Introduced by JOINT COMMITTEE ON FINANCE. Referred to Joint Committee on Finance.

1 **AN ACT** *to repeal* 16.84 (5) (d), 165.055 (3), 227.20 (3) (c), 227.46 (3) (a), 227.46
2 (8), 230.08 (2) (sb) and 238.399 (3) (e); **to renumber** 227.138 (1) (a) to (h); **to**
3 **renumber and amend** 13.90 (3), 15.165 (2), 165.08, 165.25 (6) (a), 227.135 (2),
4 227.135 (4), 227.137 (3) (e), 227.138 (1) (intro.), 227.40 (3) (intro.), 227.40 (3) (a)
5 and 343.50 (1) (c); **to amend** 5.02 (6m) (f), 13.56 (2), 13.90 (2), 13.91 (1) (c),
6 20.455 (1) (gh), 20.455 (2) (gb), 20.455 (3) (g), 45.57, 165.10, 165.25 (1), 165.25
7 (1m), 227.01 (13) (intro.), subchapter II (title) of chapter 227 [precedes 227.10],
8 227.11 (title), 227.13, 227.135 (3), 227.137 (2), 227.137 (4), 227.138 (2), 227.185,
9 227.20 (3) (a), 227.24 (1) (e) 1d., 227.24 (1) (e) 1g., 227.40 (1), 227.40 (2) (intro.),
10 227.40 (2) (e), 227.40 (3) (b) and (c), 227.40 (4) (a), 227.40 (6), 227.46 (1) (h),
11 227.46 (2), 227.46 (2m), 227.47 (1), 227.57 (11), 238.02 (1), 238.02 (2), 238.02 (3),
12 238.399 (3) (a), 281.665 (5) (d), 343.50 (3) (b), 801.50 (3) (b), 806.04 (11), 809.13
13 and subchapter VIII (title) of chapter 893 [precedes 893.80]; and **to create**
14 13.103, 13.124, 13.127, 13.365, 13.48 (24m), 13.90 (3) (a) and (b), 15.07 (1) (b)

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1 24., 15.165 (2) (d) and (f) to (i), 16.42 (5), 16.84 (2m), 16.973 (15), 35.93 (2) (b)
2 3. im., 165.07, 227.01 (3m), 227.05, 227.10 (2g), 227.11 (3), 227.112, 227.135 (1)
3 (g), 227.135 (1) (h), 227.135 (2) (a) 2., 227.135 (4) (a) 1. to 6., 227.135 (6), 227.137
4 (2m), 227.137 (3) (e) 1. to 4., 227.137 (3m), 227.138 (1g), 227.18 (3m), 227.26 (2)
5 (im), 227.47 (3), 238.04 (15), 238.399 (3) (am), 301.03 (16), 343.165 (8), 343.50
6 (1) (c) 2., 343.50 (3) (c), 803.09 (2m) and 893.825 of the statutes; **relating to:**
7 legislative powers and duties, state agency and authority composition and
8 operations, and administrative rule-making process.

Analysis by the Legislative Reference Bureau**1.**

This bill changes the Department of Justice gifts and grants appropriations from continuing appropriations to annual appropriations.

2.

This bill eliminates the power of the attorney general to appoint a solicitor general and up to three deputy solicitors general, each of whom must be licensed to practice law in this state. The effect of the bill is to eliminate the Office of the Solicitor General in the Department of Justice, which represents the state in certain cases on appeal in state and federal courts.

3.

This bill requires a party that alleges that a statute is unconstitutional, or in violation of or preempted by federal law, to serve the speaker of the assembly, the president of the senate, and the senate majority leader with a copy of the proceeding. The bill also requires that, in such cases, the assembly, the senate, and the Joint Committee on Legislative Organization (JCLO) are entitled to be heard, representing the legislature and the state.

Under current law, if a statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general must be served with a copy of the proceeding and be entitled to be heard. This requirement exists in the statutes for declaratory judgment acts under s. 806.04 (11). The Wisconsin Supreme Court has also extended the requirement to other types of actions involving claims that a statute is unconstitutional. *See Kurtz v. City of Waukesha*, 91 Wis. 2d 103, 280 N.W.2d 757 (1979). This bill incorporates the *Kurtz* rule into the statutes and extends both the current statutory and *Kurtz* requirements of service and an opportunity to be heard to the legislature when a statute is alleged to be unconstitutional or in violation of or preempted by federal law.

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The bill also provides that when a party challenges the constitutionality of a statute, facially or as applied, or challenges a statute as violating or preempted by federal law, as part of a claim or affirmative defense, the assembly, the senate, and JCLO have the right at any time to intervene and participate in the action and may also retain legal counsel other than the Department of Justice. Under the bill, the Committee on Assembly Organization may intervene in the action, as well as obtain legal counsel, on behalf of the assembly; the Committee on Senate Organization may intervene in the action, as well as obtain legal counsel, on behalf of the senate; and JCLO may intervene in the action, as well as obtain legal counsel, on behalf of the state. If JCLO determines that the interests of the state will be best represented by special counsel appointed by the legislature, JCLO must appoint special counsel to represent the state defendants and act instead of the attorney general. In these circumstances, special counsel has the powers of the attorney general with respect to the litigation to which special counsel has been appointed.

4.

Under current law, DOJ deposits settlement funds that are not committed under the terms of the settlement into a DOJ appropriation and may spend the funds only after submitting a plan for the expenditure to the Joint Committee on Finance for passive review. If JCF does not schedule a meeting to review the proposed plan within 14 days, DOJ may expend the funds as provided in the plan. This bill requires that DOJ must deposit all settlement funds into the general fund. This bill also lapses all unencumbered settlement funds that are currently in the DOJ appropriation into the general fund.

Current law allows the attorney general to compromise or discontinue an action DOJ is prosecuting if the governor approves the compromise or discontinuance. This bill requires JCF to approve the compromise or discontinuance instead of the governor. Current law allows the attorney general to settle and compromise actions in which the attorney general is appearing for and defending the state as the attorney general determines to be in the best interest of the state. This bill requires that, if the action is for injunctive relief or there is a proposed consent decree, the attorney general must submit the settlement or compromise plan to JCF for passive review. If JCF does not schedule a meeting to review the plan within 14 days, the attorney general may proceed, but, if JCF does schedule a meeting, the attorney general may proceed only with the approval of JCF.

The bill further provides that the attorney general may not submit a proposed settlement plan to JCF in which the plan concedes the unconstitutionality or other invalidity of a statute without the approval of JCLO.

5.

Currently, representatives to the assembly and senators, as well as legislative employees, may receive legal representation from the Department of Justice in most legal proceedings. Assembly and senate policies and practices also allow legislators and legislative employees to retain outside legal counsel in some instances.

With respect to the assembly, the bill provides that the speaker of the assembly may authorize a representative to the assembly or assembly employee who requires legal representation to obtain outside legal counsel if the acts or allegations

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underlying the action are arguably within the scope of the representative's or employee's duties. The speaker may also obtain outside legal counsel in any action in which the assembly is a party or in which the interests of the assembly are affected, as determined by the speaker.

With respect to the senate, the bill provides that the senate majority leader may authorize a senator or senate employee who requires legal representation to obtain outside legal counsel if the acts or allegations underlying the action are arguably within the scope of the senator's or employee's duties. The majority leader may also obtain outside legal counsel in any action in which the senate is a party or in which the interests of the senate are affected, as determined by the majority leader.

Finally, the bill provides that the cochairpersons of the Joint Committee on Legislative Organization may authorize a legislative service agency employee who requires legal representation to obtain outside legal counsel if the acts or allegations underlying the action are arguably within the scope of the employee's duties. The cochairpersons may also obtain outside legal counsel in any action in which the legislature is a party or in which the interests of the legislature are affected, as determined by the cochairpersons.

6.

The bill provides that any individual nominated by the governor or another state officer or agency, and with the advice and consent of the senate appointed, to any office or position may not hold the office or position, be nominated again for the office or position, or perform any duties of the office or position during the legislative session biennium if the individual's confirmation for the office or position is rejected by the senate. Currently, there is no prohibition against the governor or another state officer or agency nominating the individual again for the office or position or appointing the individual to the office or position as a provisional appointment.

7.

This bill requires the Department of Administration to submit any proposed changes to security at the capitol, including the posting of a firearm restriction, to the Joint Committee on Legislative Organization for approval under passive review.

8.

This bill requires the Department of Veterans Affairs to submit to the Joint Committee on Finance a notification of any transfers of funds from the unencumbered balance of certain appropriations for veterans homes to the veterans trust fund or the veterans mortgage loan repayment fund. Current law allows those transfers to be made without any notification.

9.

Under current law, no later than September 15 of each even-numbered year, each executive state agency must file with the Department of Administration the agency's budget request for the succeeding biennium. This bill requires each agency to include with its biennial budget request a report that lists each fee the agency is authorized to charge. The report must also include the following:

1. The amount of each fee or the method of calculating the fee if there is no fixed amount.

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2. An identification of the agency's statutory authority to charge each fee.
3. A statement whether or not the agency currently charges the fee.
4. A description of whether and how each fee has changed over time.
5. Any recommendation the agency has concerning each fee.

The bill defines "fee" as any amount of money other than a tax that an agency charges a person other than a governmental entity.

10.

This bill requires the Building Commission to establish an amortization schedule for each short-term, general obligation debt authorized by the commission. The amortization schedule must provide that a portion of the principal amount of the debt is retired annually over the life of the improvement or asset to which the debt is related. An amortization schedule established as required under the bill may not be modified except as authorized by the Joint Committee on Finance under passive review.

11.

This bill increases the size of the Group Insurance Board by four members. The new members are appointed, respectively, by the speaker of the assembly, the assembly minority leader, the senate majority leader, and the senate minority leader. The bill also provides that the six members appointed by the governor for two-year terms are subject to senate confirmation.

12.

Under current law, the Department of Natural Resources administers the municipal flood control and riparian restoration program, which provides grants that pay a portion of the costs of facilities and structures for the collection and transmission of storm water, including the purchase of flowage and conservation easements on lands within floodways, and of floodproofing public and private structures located in the 100-year floodplain. Current law requires DNR to promulgate rules specifying eligibility criteria for projects and for determining which projects will receive financial assistance. However, under current law, during the 2017-19 fiscal biennium, DNR must consider an applicant to be eligible for such a grant if the project is funded or executed in whole or in part by the U.S. Army Corps of Engineers' small flood control projects program, and DNR must provide such an applicant with a cost-sharing grant not to exceed \$14,600,000. This bill extends this requirement to the 2019-21 biennium as well.

13.

Under current law, the Department of Administration contracts with a vendor to provide web-based technology services through a web portal to state agencies, state authorities, units of the federal government, local governmental units, tribal schools, individuals, and entities in the private sector. Revenue received from the fees charged for certain services provided through the self-funded web portal is disbursed as payment to the vendor.

This bill requires DOA to submit to the Joint Committee on Finance and the legislature by October 1 of each year a report on the administration of the self-funded portal. The report must include the following information: 1) a financial

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statement of state revenues and expenditures; 2) a list of services available; 3) fees charged for each service; 4) the activity level of each service; and 5) any other information that DOA determines is appropriate to include.

14.

Under current law, the board of directors of the Wisconsin Economic Development Corporation consists of 12 voting members as follows:

1. Six members are appointed by the governor subject to senate confirmation, to serve at the pleasure of the governor.

2. Three members are appointed by the speaker of the assembly, consisting of one majority and one minority party representative to the assembly and one person employed in the private sector, all of whom serve at the speaker's pleasure.

3. Three members are appointed by the senate majority leader, consisting of one majority and one minority party senator and one person employed in the private sector, all of whom serve at the majority leader's pleasure.

Under this bill, the board consists of 12 voting members. However, the governor appoints four members. The speaker of the assembly and the senate majority leader each appoint three members, but the appointees need not be members of the legislature nor employed in the private sector. The minority leader of each house appoints one member to the board.

The bill further provides that the chief executive officer of WEDC is appointed by the board of directors of WEDC and serves at the pleasure of the board. Currently, the governor appoints the CEO.

15.

Current law requires the Department of Administration, at the direction of the Joint Committee on Legislative Organization, to lease or acquire office space for legislative offices or legislative service agencies. This bill requires instead that the cochairpersons of JCLO lease or acquire office space for legislative offices or legislative services agencies.

16.

This bill requires all executive branch state agencies, other than the Board of Regents of the University of Wisconsin System, to submit a quarterly report to the Joint Committee on Finance listing all state agency expenditures for state operations in the preceding calendar quarter. The report must specifically detail all expenditures for administrative supplies and services that are made at the discretion of or to be used by heads of state agencies, secretaries, deputy secretaries, assistant deputy secretaries, and executive assistants. Under the bill, "state operations" means all agency expenditures except aids to individuals and organizations and local assistance.

17.

This bill requires that the Wisconsin Economic Development Corporation obtain approval from the Joint Committee on Finance under passive review before WEDC designates a new enterprise zone under the enterprise zone tax credit program. The bill also eliminates any restriction on the number of enterprise zones

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WEDC may designate. Currently, WEDC may not designate more than 30 enterprise zones.

18.

This bill requires the Department of Corrections to submit a report to the legislature upon request, and to post the report on its website, regarding individuals who, since the previous report or during a date range specified in the request, were pardoned or released from imprisonment before completing their sentences. The report must identify each individual by name, include the crime for which he or she was convicted, and provide the name of the person who pardoned the individual or authorized the early release. If an individual appears on a report requested under this bill and is subsequently convicted of a crime, this bill requires DOC to report also the name of that individual and the crime.

19.

Generally, under current law, an agency planning to promulgate an administrative rule, including an emergency rule, must first prepare a statement of the scope of the proposed rule (scope statement). A scope statement must be submitted to the Department of Administration for a determination as to whether the agency has the explicit authority to promulgate the rule as proposed in the scope statement. DOA must then report the statement and its determination to the governor who, in his or her discretion, may approve or reject the scope statement. Also under current law, after a proposed administrative rule, including an emergency rule, is in final draft form, the agency promulgating the proposed rule must submit the proposed rule to the governor, who may approve or reject the proposed rule. No agency may promulgate an administrative rule without the written approval of the governor.

In *Coyne v. Walker*, 2016 WI 38, the Wisconsin Supreme Court held that provisions requiring gubernatorial approval of scope statements and rules are unconstitutional as applied to the superintendent of public instruction.

Consistent with the result in *Coyne*, this bill exempts rules promulgated by the Department of Public Instruction from the requirements that a) a scope statement be submitted to DOA for a determination of authority and that the scope statement be approved by the governor and b) a proposed rule in final draft form be submitted to the governor and that the governor approve the rule in writing.

20.

This bill requires a state agency to provide a statutory or administrative rule citation for any statement or interpretation of law that the agency provides in its informational materials.

21.

This bill allows the legislature to request an independent retrospective economic impact analysis (EIA) for a rule.

Under current law, either cochairperson of the Joint Committee for Review of Administrative Rules may request an independent EIA for a proposed rule after an agency submits its EIA for that proposed rule. Such a request by the senate cochairperson of JCRAR requires approval by the Committee on Senate

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Organization, and a request by the assembly cochairperson requires approval by the Committee on Assembly Organization. Current law requires the requester to enter into a contract to perform the independent EIA, and requires the analysis to be completed within 60 days after entering into the contract. Under current law, an independent EIA is paid for by the agency if the independent EIA's cost estimate for the proposed rule varies by 15 percent or more from the agency's EIA, and is paid for by the legislature if the independent EIA's cost estimate for the proposed rule varies by less than 15 percent from the agency's EIA.

Also under current law, either cochairperson of JCRAR may request an agency to conduct a retrospective EIA for existing rules, which must contain certain information and analysis about the economic impact of the agency's existing rules. This bill allows either cochairperson of JCRAR to request an independent retrospective EIA for a rule within 90 days after an agency submits a retrospective EIA for the rule. The bill specifies that a request for an independent retrospective EIA for a rule follows the same procedure and payment method as a request for an independent EIA for a proposed rule.

22.

Under current law, as the final step of the administrative rule process, an agency must file a certified copy of a rule with the Legislative Reference Bureau for publication. Filing a certified copy of a rule with the LRB creates a number of presumptions, including that the rule was duly promulgated by the agency and that all of the required rule-making procedures were complied with.

This bill eliminates the statutory presumptions that a rule was "duly" promulgated by the agency and that all of the required rule-making procedures were complied with.

23.

Under current law, a state agency must prepare a fiscal estimate for each proposed rule, which must describe the fiscal effect of the proposed rule on local governmental fiscal liabilities and revenues, the fiscal effect of the proposed rule on state government, and, for rules that the agency determines may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by the private sector in complying with the rule. Also under current law, the agency must prepare an economic impact analysis for a proposed rule, which must contain certain specified information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole, as well as certain other information regarding the economic impact of the proposed rule.

This bill specifically requires an economic impact analysis for a proposed rule to be prepared and submitted separately from the fiscal estimate for the proposed rule.

24.

This bill provides that a plan submitted by an agency to the federal government for the purpose of complying with federal law (compliance plan) does not confer rule-making authority and cannot be used by an agency as authority to promulgate rules. The bill provides that no agency may agree to promulgate a rule as a

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component of a compliance plan unless the agency has explicit statutory authority to promulgate the rule at the time the compliance plan is submitted to the federal government.

25.

Under current law, administrative rules that are in effect may be temporarily suspended by the Joint Committee for Review of Administrative Rules. If JCRAR suspends a rule, JCRAR must introduce bills in each house of the legislature to make the suspension permanent. If neither bill to support the suspension is ultimately enacted, the rule may remain in effect and JCRAR may not suspend the rule again.

This bill provides that JCRAR may suspend a rule multiple times.

26.

Under current law, an agency may, by rule or by an order in a particular case, specify that the decision of a hearing examiner who conducts a hearing in a contested case proceeding is the final decision of the agency. This bill prohibits an agency from delegating the authority to issue a final decision in a contested case to a hearing examiner. This bill also requires that all final decisions of an agency must be approved, signed, and dated by the secretary of the agency.

27.

Under current law, an applicant for a driver's license or identification card must provide to the Department of Transportation 1) an identification document that includes either the applicant's photograph or both the applicant's full legal name and date of birth; 2) documentation showing the applicant's date of birth, which may be the same as item 1; 3) proof of the applicant's social security number or verification that the applicant is not eligible for a social security number; 4) documentation showing the applicant's name and address of principal residence; and 5) documentary proof that the applicant is a U.S. citizen or is otherwise lawfully present in the United States.

In 2015 and 2017, DOT promulgated rules, the first establishing and the second modifying, a procedure by which persons requesting free identification cards for the purpose of voter identification could receive these cards despite being unable to provide required documentary proof. In general, the procedure requires an applicant to provide DOT with either 1) the applicant's full legal name, date of birth, place of birth, and any other birth record information requested by DOT; or 2) the applicant's alien or U.S. citizenship and immigration service number or U.S. citizenship certificate number. DOT then shares this information with the Department of Health Services or the federal government for the purpose of verifying the applicant's identity. In general, a person may receive a voter identification card under this procedure if either DHS or the federal government verifies the person's identity or if DOT receives acceptable alternate documentation. This bill incorporates this verification procedure into the statutes.

DOT's 2017 rule also provided a procedure by which an applicant for an identification card could obtain a card with a name other than the name that appears on the applicant's supporting documentation. The bill also incorporates this procedure into the statutes.

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Under current law, an unexpired identification card issued by an accredited university or college in this state may be used as identification for voting purposes if it contains a photograph and the signature of the person to whom it was issued, it expires no later than two years after the date of issuance, and the person establishes that he or she is enrolled as a student at the university or college on election day. The Government Accountability Board (now the Elections Commission) promulgated a rule to clarify that an identification card issued by a technical college that is governed by this state's technical college system may be used for voting purposes. The bill codifies the rule.

28.

The bill a) requires committees appointed by agencies to provide advice with respect to rule making to submit a list of the members of the committee to JCRAR; b) makes various changes with respect to the required content and preparation of statements of scope and EIAs for rules, including mandating minimum comment periods for EIAs for rules; c) prohibits an agency from submitting a statement of scope for a proposed rule to the LRB for publication in the register more than 30 days after the date of the governor's approval of the statement of scope without the approval of the governor; and d) codifies current practice by allowing an agency that intends to concurrently promulgate an emergency rule and a permanent rule that are identical in substance to submit one statement of scope indicating this intent.

29.

This bill 1) prohibits a court from according deference to agency interpretations of law in certain proceedings and prohibits agencies from seeking deference in any proceeding to agency interpretations of law; 2) establishes various requirements with respect to the adoption and use of guidance documents by agencies, including requirements that agencies must comply with in order to adopt guidance documents; and 3) provides that settlement agreements do not confer rule-making authority.

Generally under current law, when reviewing an agency decision in a contested case or other matter subject to judicial review under the law governing administrative procedure for state agencies, a court must accord due weight to the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it. Consistent with the Wisconsin Supreme Court's decision in *Tetra Tech EC, Inc. v. Wis. Dep't of Revenue*, 2018 WI 75, the bill limits this directive such that a court performing judicial review of such a decision must accord no deference to an agency's interpretation of law.

The bill also provides that no agency may seek deference in any proceeding based on the agency's interpretation of any law.

Subject to various exceptions, the bill defines "guidance document" as any formal or official document or communication issued by an agency, including a manual, handbook, directive, or informational bulletin, that 1) explains the agency's implementation of a statute or rule enforced or administered by the agency, including the current or proposed operating procedure of the agency; or 2) provides guidance or advice with respect to how the agency is likely to apply any statute or rule enforced or administered by the agency, if that guidance or advice is likely to apply to a class of persons similarly affected.

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The bill requires each agency to submit each proposed guidance document to the Legislative Reference Bureau for publication in the register and to provide a period for persons to submit written comments to the agency on the proposed guidance document. The agency must retain all written comments submitted during the public comment period and consider those comments in determining whether to adopt the guidance document as originally proposed, modify the proposed guidance document, or take any other action. The bill allows for a comment period of less than 21 days with the approval of the governor. The bill also requires each adopted guidance document, while valid, to remain available on the agency's Internet site and requires the agency to permit continuing public comment on the guidance document. Each guidance document must be signed by the head of the agency below a statement containing certain certifications.

The bill provides that a guidance document does not have the force of law and does not provide the authority for implementing or enforcing a standard, requirement, or threshold, including as a term or condition of any license. An agency that proposes to rely on a guidance document to the detriment of a person in any proceeding must afford the person an adequate opportunity to contest the legality or wisdom of a position taken in the guidance document, and an agency may not use a guidance document to foreclose consideration of any issue raised in the guidance document. The bill also contains other provisions with respect to agency use of and reliance upon guidance documents, allows certain persons to petition an agency to promulgate a rule in place of a guidance document, and makes guidance documents subject to the same judicial review provisions as apply to rules.

The bill requires the Legislative Council staff to provide agencies with assistance in determining whether documents and communications are guidance documents as defined in the bill.

The bill provides that, as of six months after the bill's effective date, any guidance document that does not comply with the requirements in the bill is considered to be rescinded.

The bill provides that a settlement agreement, consent decree, or court order does not confer rule-making authority and cannot be used by an agency as authority to promulgate rules. The bill provides that no agency may agree to promulgate a rule as a term in any settlement agreement, consent decree, or stipulated order of a court unless the agency has explicit statutory authority to promulgate the rule at the time the settlement agreement, consent decree, or stipulated order of a court is executed.

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.** 5.02 (6m) (f) of the statutes is amended to read:

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1 5.02 **(6m)** (f) An unexpired identification card issued by a university or college
2 in this state that is accredited, as defined in s. 39.30 (1) (d), or by a technical college
3 in this state that is a member of and governed by the technical college system under
4 ch. 38, that contains the date of issuance and signature of the individual to whom it
5 is issued and that contains an expiration date indicating that the card expires no
6 later than 2 years after the date of issuance if the individual establishes that he or
7 she is enrolled as a student at the university or college on the date that the card is
8 presented.

9 **SECTION 2.** 13.103 of the statutes is created to read:

10 **13.103 Joint committee on finance; state operations expenditures**
11 **report. (1)** In this section:

12 (a) “State agency” means any office, department, or independent agency in the
13 executive branch of state government, other than the Board of Regents of the
14 University of Wisconsin System.

15 (b) “State operations” means all purposes except aids to individuals and
16 organizations and local assistance.

17 **(2)** Quarterly, beginning in April 2019, each state agency shall submit a report
18 to the joint committee on finance listing all state agency expenditures for state
19 operations in the preceding calendar quarter. The report shall specifically detail all
20 expenditures for administrative supplies and services that are made at the
21 discretion of or to be used by heads of state agencies, secretaries, deputy secretaries,
22 assistant deputy secretaries, and executive assistants.

23 **SECTION 3.** 13.124 of the statutes is created to read:

24 **13.124 Legal representation. (1)** (a) The speaker of the assembly, in his or
25 her sole discretion, may authorize a representative to the assembly or assembly

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1 employee who requires legal representation to obtain legal counsel other than from
2 the department of justice, with the cost of representation paid from the appropriation
3 under s. 20.765 (1) (a), if the acts or allegations underlying the action are arguably
4 within the scope of the representative's or employee's duties. The speaker shall
5 approve all financial costs and terms of representation.

6 (b) The speaker of the assembly, in his or her sole discretion, may obtain legal
7 counsel other than from the department of justice, with the cost of representation
8 paid from the appropriation under s. 20.765 (1) (a), in any action in which the
9 assembly is a party or in which the interests of the assembly are affected, as
10 determined by the speaker. The speaker shall approve all financial costs and terms
11 of representation.

12 **(2)** (a) The senate majority leader, in his or her sole discretion, may authorize
13 a senator or senate employee who requires legal representation to obtain legal
14 counsel other than from the department of justice, with the cost of representation
15 paid from the appropriation under s. 20.765 (1) (b), if the acts or allegations
16 underlying the action are arguably within the scope of the senator's or employee's
17 duties. The senate majority leader shall approve all financial costs and terms of
18 representation.

19 (b) The senate majority leader, in his or her sole discretion, may obtain legal
20 counsel other than from the department of justice, with the cost of representation
21 paid from the appropriation under s. 20.765 (1) (b), in any action in which the senate
22 is a party or in which the interests of the senate are affected, as determined by the
23 senate majority leader. The senate majority leader shall approve all financial costs
24 and terms of representation.

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1 **(3)** (a) The cochairpersons of the joint committee on legislative organization,
2 in their sole discretion, may authorize an employee of a legislative service agency, as
3 defined in s. 13.90 (1m) (a), who requires legal representation to obtain legal counsel
4 other than from the department of justice, with the cost of representation paid from
5 the appropriation under s. 20.765 (1) (a) or (b), as determined by the cochairpersons,
6 if the acts or allegations underlying the action are arguably within the scope of the
7 employee's duties. The cochairpersons shall approve all financial costs and terms of
8 representation.

9 (b) The cochairpersons of the joint committee on legislative organization, in
10 their sole discretion, may obtain legal counsel other than from the department of
11 justice, with the cost of representation paid from the appropriation under s. 20.765
12 (1) (a) or (b), as determined by the cochairpersons, in any action in which the
13 legislature is a party or in which the interests of the legislature are affected, as
14 determined by the cochairpersons. The cochairpersons shall approve all financial
15 costs and terms of representation.

16 **SECTION 4.** 13.127 of the statutes is created to read:

17 **13.127 Advice and consent of the senate.** Any individual nominated by the
18 governor or another state officer or agency, and with the advice and consent of the
19 senate appointed, to any office or position may not hold the office or position, be
20 nominated again for the office or position, or perform any duties of the office or
21 position during the legislative session biennium if the individual's confirmation for
22 the office or position is rejected by the senate.

23 **SECTION 5.** 13.365 of the statutes is created to read:

24 **13.365 Intervention.** Pursuant to s. 803.09 (2m), when a party to an action
25 challenges in state or federal court the constitutionality of a statute, facially or as

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1 applied, or challenges a statute as violating or preempted by federal law, as part of
2 a claim or affirmative defense:

3 (1) The committee on assembly organization may intervene at any time in the
4 action on behalf of the assembly. The committee on assembly organization may
5 obtain legal counsel other than from the department of justice, with the cost of
6 representation paid from the appropriation under s. 20.765 (1) (a), to represent the
7 assembly in any action in which the assembly intervenes.

8 (2) The committee on senate organization may intervene at any time in the
9 action on behalf of the senate. The committee on senate organization may obtain
10 legal counsel other than from the department of justice, with the cost of
11 representation paid from the appropriation under s. 20.765 (1) (b), to represent the
12 senate in any action in which the senate intervenes.

13 (3) The joint committee on legislative organization may intervene at any time
14 in the action on behalf of the state. The joint committee on legislative organization
15 may obtain legal counsel other than from the department of justice, with the cost of
16 representation paid from the appropriation under s. 20.765 (1) (a) or (b), as
17 determined by the cochairpersons, to represent the state in any action in which the
18 joint committee on legislative organization intervenes.

19 **SECTION 6.** 13.48 (24m) of the statutes is created to read:

20 13.48 (24m) REPAYMENT OF PRINCIPAL ON SHORT-TERM COMMERCIAL PAPER. (a)
21 *Definition.* In this subsection, “commercial paper program” means a program
22 authorized by the building commission for the issuance of short-term, general
23 obligation debt in lieu of long-term, general obligation debt.

24 (b) *Amortization schedule required.* For each commercial paper program, the
25 building commission shall establish an amortization schedule for the repayment of

SENATE BILL 884**SECTION 6**

1 principal on debt issued under the program so that a portion of the principal amount
2 of each debt is retired annually over the life of the improvement or asset to which the
3 debt is related. The commission shall provide each amortization schedule
4 established under this paragraph to the joint committee on finance.

5 (c) *Schedule modification.* An amortization schedule established under par. (b)
6 may not be modified except as follows:

7 1. Before the building commission modifies the amortization schedule, the
8 commission shall notify the joint committee on finance in writing of the commission's
9 intention to modify the amortization schedule. The notice shall describe each
10 modification and the reasons for making the modification.

11 2. If, within 14 working days after the date of the building commission's notice
12 under subd. 1., the cochairpersons of the joint committee on finance do not notify the
13 commission that the committee has scheduled a meeting to review the commission's
14 proposal, the commission may make each modification as proposed in the notice. If,
15 within 14 working days after the date of the commission's notice under subd. 1., the
16 cochairpersons of the committee notify the commission that the committee has
17 scheduled a meeting to review the commission's proposal, the commission may make
18 each proposed modification only upon approval of the committee.

19 **SECTION 7.** 13.56 (2) of the statutes is amended to read:

20 13.56 (2) PARTICIPATION IN CERTAIN PROCEEDINGS. The cochairpersons of the joint
21 committee for review of administrative rules or their designated agents shall accept
22 service made under ss. 227.40 (5) and 806.04 (11). If the committee determines that
23 the legislature should be represented in the proceeding, it shall request the joint
24 committee on legislative organization to designate the legislature's representative
25 ~~for~~ intervene in the proceeding as provided under s. 806.04 (11). The costs of

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1 participation in the proceeding shall be paid equally from the appropriations under
2 s. 20.765 (1) (a) and (b), except that such costs incurred by the department of justice
3 shall be paid from the appropriation under s. 20.455 (1) (d).

4 **SECTION 8.** 13.90 (2) of the statutes is amended to read:

5 13.90 (2) The cochairpersons of the joint committee on legislative organization
6 or their designated agent shall accept service made under s. ~~ss.~~ 806.04 (11) and
7 893.825 (2). If the committee, the senate organization committee, or the assembly
8 organization committee, determines that the legislature should be represented
9 intervene in the proceeding, ~~that committee shall designate the legislature's~~
10 ~~representative for the proceeding.~~ as provided under s. 803.09 (2m), the assembly
11 shall represent the assembly, the senate shall represent the senate, and the joint
12 committee on legislative organization shall represent the state. In an action
13 involving the constitutionality of a statute, or challenging a statute as violating or
14 preempted by federal law, if the joint committee on legislative organization
15 determines at any time that the interests of the state will be best represented by
16 special counsel appointed by the legislature, it shall appoint special counsel to
17 represent state defendants and act instead of the attorney general and the attorney
18 general may not participate in the action. Special counsel appointed under this
19 subsection shall have the powers of the attorney general with respect to the litigation
20 to which special counsel has been appointed. The costs of participation in the
21 proceeding shall be paid equally from the appropriations under s. 20.765 (1) (a) and
22 (b), except that such costs incurred by the department of justice shall be paid from
23 the appropriation under s. 20.455 (1) (d).

24 **SECTION 9.** 13.90 (3) of the statutes is renumbered 13.90 (3) (c) and amended
25 to read:

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1 13.90 (3) (c) The joint committee on legislative organization shall assign office
2 space for legislative offices and the offices of the legislative service agencies as
3 ~~defined in sub. (1m)~~. The joint committee may assign any space in the capitol not
4 reserved for other uses under s. 16.835. Except as provided in ss. 13.09 (6) and 13.45
5 (4) (c), the joint committee may locate any legislative office or the office of any
6 legislative service agency outside the capitol at another suitable building in the city
7 of Madison.

8 **SECTION 10.** 13.90 (3) (a) and (b) of the statutes are created to read:

9 13.90 (3) (a) In this subsection, “legislative service agency” has the meaning
10 given in sub. (1m).

11 (b) The cochairpersons of the joint committee on legislative organization shall
12 lease or acquire office space for legislative offices or legislative service agencies under
13 par. (c).

14 **SECTION 11.** 13.91 (1) (c) of the statutes is amended to read:

15 13.91 (1) (c) Perform the functions prescribed in ~~s. 227.15 for the review and~~
16 ~~resolution of problems~~ ch. 227 relating to administrative rules and guidance
17 documents.

18 **SECTION 12.** 15.07 (1) (b) 24. of the statutes is created to read:

19 15.07 (1) (b) 24. The 6 members of the group insurance board appointed under
20 s. 15.165 (2) (j).

21 **SECTION 13.** 15.165 (2) of the statutes is renumbered 15.165 (2) (intro) and
22 amended to read:

23 15.165 (2) GROUP INSURANCE BOARD. (intro.) There is created in the department
24 of employee trust funds a group insurance board. The board shall consist of the
25 following members:

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1 (a) ~~The governor, the~~ or his or her designee.

2 (b) ~~The attorney general, the~~ or his or her designee.

3 (c) ~~The secretary of administration, the director of the office of state~~
4 ~~employment relations, and the~~ or his or her designee.

5 (e) ~~The commissioner of insurance or their designees, and~~ 6 his or her designee.

6 (j) Six persons appointed for 2-year terms, of whom one shall be an insured
7 participant in the Wisconsin Retirement System who is not a teacher, one shall be
8 an insured participant in the Wisconsin Retirement System who is a teacher, one
9 shall be an insured participant in the Wisconsin Retirement System who is a retired
10 employee, one shall be an insured employee of a local unit of government, and one
11 shall be the chief executive or a member of the governing body of a local unit of
12 government that is a participating employer in the Wisconsin Retirement System.

13 **SECTION 14.** 15.165 (2) (d) and (f) to (i) of the statutes are created to read:

14 15.165 (2) (d) The administrator of the division of personnel management in
15 the department of administration or his or her designee.

16 (f) One individual appointed by the speaker of the assembly.

17 (g) One individual appointed by the minority leader of the assembly.

18 (h) One individual appointed by the majority leader of the senate.

19 (i) One individual appointed by the minority leader of the senate.

20 **SECTION 15.** 16.42 (5) of the statutes is created to read:

21 16.42 (5) (a) In this subsection, "fee" means any amount of money other than
22 a tax that an agency charges a person other than a governmental entity.

23 (b) Each agency required to submit a budget request under sub. (1) shall
24 include with its request a report that lists each fee the agency is required or
25 otherwise authorized to charge and that includes all of the following:

SENATE BILL 884**SECTION 15**

1 1. The amount of each fee, or, if a fee does not have a fixed amount, the method
2 of calculating the fee.

3 2. An identification of the agency's statutory authority to charge each fee.

4 3. A statement whether or not the agency currently charges the fee.

5 4. A description of whether and how each fee has increased or decreased since
6 the agency was first authorized to charge the fee.

7 5. Any recommendation the agency has concerning each fee.

8 **SECTION 16.** 16.84 (2m) of the statutes is created to read:

9 16.84 **(2m)** Send notice to the joint committee on legislative organization of any
10 proposed changes to security at the capitol, including the posting of a firearm
11 restriction under s. 943.13 (1m) (c) 2. or 4. If, within 14 working days after the date
12 of the notice, the cochairpersons of the joint committee on legislative organization do
13 not notify the department that the committee has scheduled a meeting to review the
14 department's proposal, the department may implement the changes as proposed in
15 the notice. If, within 14 working days after the date of the department's notice, the
16 cochairpersons of the committee notify the department that the committee has
17 scheduled a meeting to review the department's proposal, the department may
18 implement the proposed changes only upon approval of the committee.

19 **SECTION 17.** 16.84 (5) (d) of the statutes is repealed.

20 **SECTION 18.** 16.973 (15) of the statutes is created to read:

21 16.973 **(15)** By October 1 of each year, submit to the joint committee on finance
22 and the legislature under s. 13.172 (2) a report on the administration of the
23 information technology and communication services self-funded portal. The report
24 shall include the following information regarding the portal for the immediately
25 preceding fiscal year:

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- 1 (a) A financial statement of state revenues and expenditures.
- 2 (b) A list of services available through the portal, identifying services added
3 since the previous reporting period.
- 4 (c) Fees charged for each service available through the portal.
- 5 (d) The activity level of each service available through the portal.
- 6 (e) Any other information the department determines to be appropriate to
7 include.

8 **SECTION 19.** 20.455 (1) (gh) of the statutes is amended to read:

9 20.455 (1) (gh) *Investigation and prosecution.* Moneys received under ss. 23.22
10 (9) (c), 49.49 (6), 100.263, 133.16, 281.98 (2), 283.91 (5), 289.96 (3) (b), 291.97 (3),
11 292.99 (2), 293.87 (4) (b), 295.19 (3) (b) 2., 295.79 (4) (b), and 299.97 (2), for the
12 expenses of investigation and prosecution of violations, including attorney fees, and
13 ~~for expenses related to s. 165.055 (3).~~

14 **SECTION 20.** 20.455 (2) (gb) of the statutes is amended to read:

15 20.455 (2) (gb) *Gifts and grants.* The amounts in the schedule to carry out the
16 purposes for which gifts and grants are made and received. All moneys received from
17 gifts and grants, other than moneys received for and credited to another
18 appropriation account under this subsection, ~~to carry out the purposes for which~~
19 ~~made and received~~ shall be credited to this appropriation account.

20 **SECTION 21.** 20.455 (3) (g) of the statutes is amended to read:

21 20.455 (3) (g) *Gifts, grants and proceeds.* The amounts in the schedule to carry
22 out the purposes for which gifts and grants are made and collected. All moneys
23 received from gifts and grants and all proceeds from services, conferences, and sales
24 of publications and promotional materials ~~to carry out the purposes for which made~~
25 ~~or collected~~, except as provided in sub. (2) (gm) and (gp) and to transfer to s. 20.505

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1 (1) (kg), at the discretion of the attorney general, an amount not to exceed \$98,300
2 annually, shall be credited to this appropriation account.

3 **SECTION 22.** 35.93 (2) (b) 3. im. of the statutes is created to read:

4 35.93 (2) (b) 3. im. Notices of public comment periods on proposed guidance
5 documents under s. 227.112 (1) (a).

6 **SECTION 23.** 45.57 of the statutes is amended to read:

7 45.57 **Veterans homes; transfer of funding.** The department may transfer
8 all or part of the unencumbered balance of any of the appropriations under s. 20.485
9 (1) (g), (gd), (gk), or (i) to the veterans trust fund or to the veterans mortgage loan
10 repayment fund. The department shall notify the joint committee on finance in
11 writing of any balance transferred under this section.

12 **SECTION 24.** 165.055 (3) of the statutes is repealed.

13 **SECTION 25.** 165.07 of the statutes is created to read:

14 **165.07 Intervention by joint committee on legislative organization.** If
15 the joint committee on legislative organization intervenes in an action in state or
16 federal court as permitted under s. 803.09 (2m), the attorney general shall notify the
17 court of the substitution of counsel by special counsel appointed by the joint
18 committee on legislative organization and may not participate in the action.

19 **SECTION 26.** 165.08 of the statutes is renumbered 165.08 (1) and amended to
20 read:

21 165.08 (1) Any civil action prosecuted by the department by direction of any
22 officer, department, board, or commission, ~~shall be compromised or discontinued~~
23 ~~when so directed by such officer, department, board or commission.~~ Any or any civil
24 action prosecuted by the department on the initiative of the attorney general, or at
25 the request of any individual may be compromised or discontinued with the approval

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1 of the governor only by submission of a proposed plan to the joint committee on
2 finance for the approval of the committee. The compromise or discontinuance may
3 occur only if the joint committee on finance approves the proposed plan. No proposed
4 plan may be submitted to the joint committee on finance if the plan concedes the
5 unconstitutionality or other invalidity of a statute, facially or as applied, or concedes
6 that a statute violates or is preempted by federal law, without the approval of the
7 joint committee on legislative organization.

8 (2) In any criminal action prosecuted by the attorney general, the department
9 shall have the same powers with reference to such action as are vested in district
10 attorneys.

11 **SECTION 27.** 165.10 of the statutes, as created by 2017 Wisconsin Act 59, is
12 amended to read:

13 **165.10 Limits on expenditure Deposit of discretionary settlement**
14 **funds.** Notwithstanding s. 20.455 (3), before the The attorney general may expend
15 shall deposit all settlement funds under s. 20.455 (3) (g) that are not committed
16 under the terms of the settlement, the attorney general shall submit to the joint
17 committee on finance a proposed plan for the expenditure of the funds. If the
18 cochairpersons of the committee do not notify the attorney general within 14 working
19 days after the submittal that the committee has scheduled a meeting for the purpose
20 of reviewing the proposed plan, the attorney general may expend the funds to
21 implement the proposed plan. If, within 14 working days after the submittal, the
22 cochairpersons of the committee notify the attorney general that the committee has
23 scheduled a meeting for the purpose of reviewing the proposed plan, the attorney
24 general may expend the funds only to implement the plan as approved by the
25 committee into the general fund.

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1 **SECTION 28.** 165.25 (1) of the statutes is amended to read:

2 165.25 (1) REPRESENT STATE IN APPEALS AND ON REMAND. Except as provided in
3 ss. 5.05 (2m) (a), 19.49 (2) (a), and 978.05 (5), if the joint committee on legislative
4 organization does not intervene as permitted under s. 803.09 (2m), appear for the
5 state and prosecute or defend all actions and proceedings, civil or criminal, in the
6 court of appeals and the supreme court, in which the state is interested or a party,
7 and attend to and prosecute or defend all civil cases sent or remanded to any circuit
8 court in which the state is a party. ~~Nothing~~ The joint committee on legislative
9 organization may intervene as permitted under s. 803.09 (2m) at any time, and if the
10 committee intervenes, the attorney general shall notify the court of the substitution
11 of counsel by special counsel appointed by the committee to represent the state and
12 may not participate in the action, proceeding, or case. Unless the joint committee on
13 legislative organization intervenes as permitted under s. 803.09 (2m), nothing in this
14 subsection deprives or relieves the attorney general or the department of justice of
15 any authority or duty under this chapter in any other matter.

16 **SECTION 29.** 165.25 (1m) of the statutes is amended to read:

17 165.25 (1m) REPRESENT STATE IN OTHER MATTERS. If the joint committee on
18 legislative organization does not intervene as permitted under s. 803.09 (2m), if
19 requested by the governor or either house of the legislature, appear for and represent
20 the state, any state department, agency, official, employee or agent, whether
21 required to appear as a party or witness in any civil or criminal matter, and prosecute
22 or defend in any court or before any officer, any cause or matter, civil or criminal, in
23 which the state or the people of this state may be interested. The joint committee on
24 legislative organization may intervene as permitted under s. 803.09 (2m) at any
25 time, and if the committee intervenes, the attorney general shall notify the court of

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1 the substitution of counsel by special counsel appointed by the committee to
2 represent the state and may not participate in the cause or matter. The public service
3 commission may request under s. 196.497 (7) that the attorney general intervene in
4 federal proceedings. All expenses of the proceedings shall be paid from the
5 appropriation under s. 20.455 (1) (d).

6 **SECTION 30.** 165.25 (6) (a) of the statutes is renumbered 165.25 (6) (a) 1. and
7 amended to read:

8 165.25 (6) (a) 1. At Except as provided in ss. 806.04 (11) and 893.825 (2), at the
9 request of the head of any department of state government, the attorney general may
10 appear for and defend any state department, or any state officer, employee, or agent
11 of the department in any civil action or other matter brought before a court or an
12 administrative agency which is brought against the state department, or officer,
13 employee, or agent for or on account of any act growing out of or committed in the
14 lawful course of an officer's, employee's, or agent's duties. Witness fees or other
15 expenses determined by the attorney general to be reasonable and necessary to the
16 defense in the action or proceeding shall be paid as provided for in s. 885.07. The
17 attorney general may compromise and settle the action as the attorney general
18 determines to be in the best interest of the state except that, if the action is for
19 injunctive relief or there is a proposed consent decree, the attorney general may not
20 compromise or settle the action without first submitting a proposed plan to the joint
21 committee on finance. If, within 14 working days after the plan is submitted, the
22 cochairpersons of the committee notify the attorney general that the committee has
23 scheduled a meeting for the purpose of reviewing the proposed plan, the attorney
24 general may compromise or settle the action only with the approval of the committee.
25 The attorney general may not submit a proposed plan to the joint committee on

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1 finance under this subdivision in which the plan concedes the unconstitutionality or
2 other invalidity of a statute, facially or as applied, or concedes that a statute violates
3 or is preempted by federal law, without the approval of the joint committee on
4 legislative organization.

5 2. Members, officers, and employees of the Wisconsin state agencies building
6 corporation and the Wisconsin state public building corporation are covered by this
7 section. Members of the board of governors created under s. 619.04 (3), members of
8 a committee or subcommittee of that board of governors, members of the injured
9 patients and families compensation fund peer review council created under s.
10 655.275 (2), and persons consulting with that council under s. 655.275 (5) (b) are
11 covered by this section with respect to actions, claims, or other matters arising
12 before, on, or after April 25, 1990. The attorney general may compromise and settle
13 claims asserted before such actions or matters formally are brought or may delegate
14 such authority to the department of administration. This paragraph may not be
15 construed as a consent to sue the state or any department thereof or as a waiver of
16 state sovereign immunity.

17 **SECTION 31.** 227.01 (3m) of the statutes is created to read:

18 227.01 **(3m)** (a) "Guidance document" means, except as provided in par. (b), any
19 formal or official document or communication issued by an agency, including a
20 manual, handbook, directive, or informational bulletin, that does any of the
21 following:

22 1. Explains the agency's implementation of a statute or rule enforced or
23 administered by the agency, including the current or proposed operating procedure
24 of the agency.

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1 2. Provides guidance or advice with respect to how the agency is likely to apply
2 a statute or rule enforced or administered by the agency, if that guidance or advice
3 is likely to apply to a class of persons similarly affected.

4 (b) “Guidance document” does not include any of the following:

5 1. A rule that has been promulgated and that is currently in effect or a proposed
6 rule that is in the process of being promulgated.

7 2. A standard adopted, or a statement of policy or interpretation made, whether
8 preliminary or final, in the decision of a contested case, in a private letter ruling
9 under s. 73.035, or in an agency decision upon or disposition of a particular matter
10 as applied to a specific set of facts.

11 3. Any document or activity described in sub. (13) (a) to (zz), except that
12 “guidance document” includes a pamphlet or other explanatory material described
13 under sub. (13) (r) that otherwise satisfies the definition of “guidance document”
14 under par. (a).

15 4. Any document that any statute specifically provides is not required to be
16 promulgated as a rule.

17 5. A declaratory ruling issued under s. 227.41.

18 6. A pleading or brief filed in court by the state, an agency, or an agency official.

19 7. A letter or written legal advice of the department of justice or a formal or
20 informal opinion of the attorney general, including an opinion issued under s.
21 165.015 (1).

22 8. Any document or communication for which a procedure for public input,
23 other than that provided under s. 227.112 (1), is provided by law.

24 9. Any document or communication that is not subject to the right of inspection
25 and copying under s. 19.35 (1).

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1 **SECTION 36.** 227.11 (title) of the statutes is amended to read:

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

4 **SECTION 37.** 227.11 (3) of the statutes is created to read:

5 227.11 **(3)** (a) A plan that is submitted to the federal government for the
6 purpose of complying with a requirement of federal law does not confer rule-making
7 authority and cannot be used by an agency as authority to promulgate rules. No
8 agency may agree to promulgate a rule as a component of a compliance plan unless
9 the agency has explicit statutory authority to promulgate the rule at the time the
10 compliance plan is submitted.

11 (b) A settlement agreement, consent decree, or court order does not confer
12 rule-making authority and cannot be used by an agency as authority to promulgate
13 rules. No agency may agree to promulgate a rule as a term in any settlement
14 agreement, consent decree, or stipulated order of a court unless the agency has
15 explicit statutory authority to promulgate the rule at the time the settlement
16 agreement, consent decree, or stipulated order of a court is executed.

17 **SECTION 38.** 227.112 of the statutes is created to read:

18 **227.112 Guidance documents. (1)** (a) Before adopting a guidance document,
19 an agency shall submit to the legislative reference bureau the proposed guidance
20 document with a notice of a public comment period on the proposed guidance
21 document under par. (b), in a format approved by the legislative reference bureau,
22 for publication in the register. The notice shall specify the place where comments
23 should be submitted and the deadline for submitting those comments.

24 (b) The agency shall provide for a period for public comment on a proposed
25 guidance document submitted under par. (a), during which any person may submit

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1 written comments to the agency with respect to the proposed guidance document.
2 Except as provided in par. (c), the period for public comment shall end no sooner than
3 the 21st day after the date on which the proposed guidance document is published
4 in the register under s. 35.93 (2) (b) 3. im. The agency may not adopt the proposed
5 guidance document until the comment period has concluded and the agency has
6 complied with par. (d).

7 (c) An agency may hold a public comment period shorter than 21 days with the
8 approval of the governor.

9 (d) An agency shall retain all written comments submitted during the public
10 comment period under par. (b) and shall consider those comments in determining
11 whether to adopt the guidance document as originally proposed, modify the proposed
12 guidance document, or take any other action.

13 (2) An agency shall post each guidance document that the agency has adopted
14 on the agency's Internet site and shall permit continuing public comment on the
15 guidance document. The agency shall ensure that each guidance document that the
16 agency has adopted remains on the agency's Internet site as provided in this
17 subsection until the guidance document is no longer in effect, is no longer valid, or
18 is superseded or until the agency otherwise rescinds its adoption of the guidance
19 document.

20 (3) A guidance document does not have the force of law and does not provide
21 the authority for implementing or enforcing a standard, requirement, or threshold,
22 including as a term or condition of any license. An agency that proposes to rely on
23 a guidance document to the detriment of a person in any proceeding shall afford the
24 person an adequate opportunity to contest the legality or wisdom of a position taken

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1 in the guidance document. An agency may not use a guidance document to foreclose
2 consideration of any issue raised in the guidance document.

3 (4) If an agency proposes to act in any proceeding at variance with a position
4 expressed in a guidance document, it shall provide a reasonable explanation for the
5 variance. If an affected person in any proceeding may have relied reasonably on the
6 agency's position, the explanation must include a reasonable justification for the
7 agency's conclusion that the need for the variance outweighs the affected person's
8 reliance interest.

9 (5) Persons that qualify under s. 227.12 to petition an agency to promulgate
10 a rule may, as provided in s. 227.12, petition an agency to promulgate a rule in place
11 of a guidance document.

12 (6) Any guidance document shall be signed by the secretary or head of the
13 agency below the following certification: "I have reviewed this guidance document
14 or proposed guidance document and I certify that it complies with sections 227.10
15 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document
16 or proposed guidance document contains no standard, requirement, or threshold
17 that is not explicitly required or explicitly permitted by a statute or a rule that has
18 been lawfully promulgated. I further certify that the guidance document or proposed
19 guidance document contains no standard, requirement, or threshold that is more
20 restrictive than a standard, requirement, or threshold contained in the Wisconsin
21 Statutes."

22 (7) This section does not apply to guidance documents adopted before the first
23 day of the 7th month beginning after the effective date of this subsection [LRB
24 inserts date], but on that date any guidance document that has not been adopted in

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1 accordance with sub. (1) or that does not contain the certification required under sub.
2 (6) shall be considered rescinded.

3 (8) The legislative council staff shall provide agencies with assistance in
4 determining whether documents and communications are guidance documents that
5 are subject to the requirements under this section.

6 **SECTION 39.** 227.13 of the statutes is amended to read:

7 **227.13 Advisory committees and informal consultations.** An agency may
8 use informal conferences and consultations to obtain the viewpoint and advice of
9 interested persons with respect to contemplated rule making. An agency also may
10 also appoint a committee of experts, interested persons or representatives of the
11 public to advise it with respect to any contemplated rule making. The Such a
12 committee shall have advisory powers only. Whenever an agency appoints a
13 committee under this section, the agency shall submit a list of the members of the
14 committee to the joint committee for review of administrative rules.

15 **SECTION 40.** 227.135 (1) (g) of the statutes is created to read:

16 227.135 (1) (g) A statement as to whether the agency anticipates that the
17 proposed rule will have minimal or no economic impact, a moderate economic impact,
18 or a significant economic impact, whether locally, statewide, or on a sector of the
19 economy.

20 **SECTION 41.** 227.135 (1) (h) of the statutes is created to read:

21 227.135 (1) (h) For a proposed emergency rule promulgated under s. 227.24,
22 an explanation of why the rule is necessary for the preservation of the public peace,
23 health, safety, or welfare. If the rule is exempt from the required finding of
24 emergency, the statement of scope shall cite the act number and section or the statute
25 section authorizing the promulgation of an emergency rule or a statement that the

SENATE BILL 884**SECTION 41**

1 rule is promulgated at the direction of the joint committee for review of
2 administrative rules under s. 227.26 (2) (b). The agency shall also include a
3 statement as to whether the agency will promulgate a corresponding permanent rule
4 and the agency's anticipated time line for promulgating the permanent rule.

5 **SECTION 42.** 227.135 (2) of the statutes is renumbered 227.135 (2) (a) 1. and
6 amended to read:

7 227.135 (2) (a) 1. ~~An~~ Except as provided in subd. 2., an agency that has
8 prepared a statement of the scope of the proposed rule shall present the statement
9 to the department of administration, which shall make a determination as to
10 whether the agency has the explicit authority to promulgate the rule as proposed in
11 the statement of scope and shall report the statement of scope and its determination
12 to the governor who, in his or her discretion, may approve or reject the statement of
13 scope. ~~The~~ Except as provided in subd. 2., the agency may not send the statement
14 to the legislative reference bureau for publication under sub. (3) until the governor
15 issues a written notice of approval of the statement and may not, without the written
16 approval of the governor, send the statement to the legislative reference bureau for
17 publication under sub. (3) more than 30 days after the date of the governor's approval
18 of the statement of scope.

19 (b) ~~The~~ An agency that has prepared a statement of the scope of the proposed
20 rule shall also present the statement to the individual or body with policy-making
21 powers over the subject matter of the proposed rule for approval. The individual or
22 body with policy-making powers may not approve the statement until at least 10
23 days after publication of the statement under sub. (3) and, if a preliminary public
24 hearing and comment period are held by the agency under s. 227.136, until the

SENATE BILL 884**SECTION 42**

1 individual or body has received and reviewed any public comments and feedback
2 received from the agency under s. 227.136 (5).

3 (c) No state employee or official may perform any activity in connection with
4 the drafting of a proposed rule, except for an activity necessary to prepare the
5 statement of the scope of the proposed rule, ~~until the governor and the individual or~~
6 ~~body with policy-making powers over the subject matter of the proposed rule~~
7 ~~approve the statement~~ has been approved as required under pars. (a) and (b). This
8 ~~subsection paragraph~~ does not prohibit an agency from performing an activity
9 necessary to prepare a petition and proposed rule for submission under s. 227.26 (4).

10 **SECTION 43.** 227.135 (2) (a) 2. of the statutes is created to read:

11 227.135 (2) (a) 2. The requirement under subd. 1. does not apply to statements
12 of scope prepared by the department of public instruction.

13 **SECTION 44.** 227.135 (3) of the statutes is amended to read:

14 227.135 (3) ~~If the governor approves a~~ An agency that prepares a statement
15 of the scope of a proposed rule under sub. (2), the agency (1) shall, subject to sub. (2)
16 (a) 1., send an electronic copy of the statement to the legislative reference bureau,
17 in a format approved by the legislative reference bureau, for publication in the
18 register. On the same day that the agency sends the statement to the legislative
19 reference bureau, the agency shall send a copy of the statement to the secretary of
20 administration and to the chief clerks of each house of the legislature, who shall
21 distribute the statement to the cochairpersons of the joint committee for review of
22 administrative rules. The agency shall include with any statement of scope sent to
23 the legislative reference bureau the date of the governor's approval of the statement
24 of scope if such approval is required under sub. (2) (a). The legislative reference
25 bureau shall assign a discrete identifying number to each statement of scope and

SENATE BILL 884**SECTION 44**

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

3 **SECTION 45.** 227.135 (4) of the statutes is renumbered 227.135 (4) (a) (intro.)
4 and amended to read:

5 227.135 (4) (a) (intro.) If at any time after a statement of the scope of a proposed
6 rule is approved under sub. (2) the agency changes the scope of the proposed rule in
7 any meaningful or measurable way, ~~including changing the scope of the proposed~~
8 ~~rule so as to include in the scope any activity, business, material, or product that is~~
9 ~~not specifically included in the original scope of the proposed rule~~, the agency shall
10 prepare and obtain approval of a revised statement of the scope of the proposed rule
11 in the same manner as the original statement was prepared and approved under
12 subs. (1) and (2). ~~No~~ For purposes of this subsection, a meaningful or measurable
13 change includes any of the following:

14 (b) Whenever an agency is required to prepare a revised statement of scope
15 under this subsection, no state employee or official may perform any activity in
16 connection with the drafting of the proposed rule except for an activity necessary to
17 prepare the revised statement of the scope of the proposed rule until the revised
18 statement is so approved as provided in sub. (2).

19 **SECTION 46.** 227.135 (4) (a) 1. to 6. of the statutes are created to read:

20 227.135 (4) (a) 1. A change to the objectives of the proposed rule.

21 2. A change to the basis and purpose of the proposed rule.

22 3. A change to the policies to be included in the proposed rule.

23 4. A change to the entities affected by the proposed rule.

24 5. A change to the overall breadth or scope of the regulation in the proposed
25 rule.

SENATE BILL 884**SECTION 46**

1 6. A change to the scope of the proposed rule so as to include in the scope any
2 activity, business, material, or product that is not specifically included in the original
3 statement.

4 **SECTION 47.** 227.135 (6) of the statutes is created to read:

5 227.135 (6) An agency that intends to concurrently promulgate an emergency
6 rule and a permanent rule that are identical in substance may submit one statement
7 of scope indicating this intent.

8 **SECTION 48.** 227.137 (2) of the statutes is amended to read:

9 227.137 (2) An agency shall prepare an economic impact analysis for a
10 proposed rule before submitting the proposed rule to the legislative council staff
11 under s. 227.15. Prior to preparing an economic impact analysis as provided in this
12 subsection, the agency shall review the statement of scope for the proposed rule
13 prepared under s. 227.135 to determine whether a revised statement of scope is
14 required under s. 227.135 (4).

15 **SECTION 49.** 227.137 (2m) of the statutes is created to read:

16 227.137 (2m) An agency's economic impact analysis under sub. (2) or revised
17 economic impact analysis under sub. (4) shall be prepared and submitted separately
18 from any fiscal estimate or revised fiscal estimate prepared and submitted under s.
19 227.14 (4) (a) or (d).

20 **SECTION 50.** 227.137 (3) (e) of the statutes is renumbered 227.137 (3) (e) (intro.)
21 and amended to read:

22 227.137 (3) (e) (intro.) A determination made in consultation with the
23 businesses, local governmental units, and individuals that may be affected by the
24 proposed rule as to whether the proposed rule would adversely affect in a material
25 way the economy, a sector of the economy, productivity, jobs, or the overall economic

SENATE BILL 884**SECTION 50**

1 competitiveness of this state. The agency shall make the determination required
2 under this paragraph by doing all of the following:

3 **SECTION 51.** 227.137 (3) (e) 1. to 4. of the statutes are created to read:

4 227.137 (3) (e) 1. Compiling a list of affected persons and potential economic
5 concerns identified in the comments solicited by the agency.

6 2. Contacting affected persons to discuss economic concerns.

7 3. Considering any raised concerns in drafting the economic impact analysis.

8 4. Documenting in the economic impact analysis the persons who were
9 consulted and whether the agency's determination is disputed by any of the affected
10 persons.

11 **SECTION 52.** 227.137 (3m) of the statutes is created to read:

12 227.137 (3m) (a) When soliciting comments under sub. (3) for an economic
13 impact analysis, an agency shall accept comments for a period of at least 14 calendar
14 days if, under s. 227.135 (1) (g), the statement of scope for the proposed rule indicates
15 that the proposed rule will have minimal or no economic impact, at least 30 calendar
16 days if it indicates a moderate economic impact, and at least 60 calendar days if it
17 indicates a significant economic impact or if the agency anticipates that the proposed
18 rule will result in \$10,000,000 or more in implementation and compliance costs being
19 incurred by or passed along to businesses, local governmental units, and individuals
20 over any 2-year period. If the agency subsequently determines that the anticipated
21 economic impact will be greater than indicated in the statement of scope, the agency
22 shall adjust the comment period accordingly. An agency may not reduce a comment
23 period once determined under this subsection.

24 (b) This subsection does not apply to a person preparing an independent
25 economic impact analysis under sub. (4m).

SENATE BILL 884**SECTION 53**

1 **SECTION 53.** 227.137 (4) of the statutes is amended to read:

2 227.137 (4) On the same day that the agency submits the economic impact
3 analysis to the legislative council staff under s. 227.15 (1), the agency shall also
4 submit that analysis to the department of administration, to the governor, and to the
5 chief clerks of each house of the legislature, who shall distribute the analysis to the
6 presiding officers of their respective houses, to the chairpersons of the appropriate
7 standing committees of their respective houses, as designated by those presiding
8 officers, and to the cochairpersons of the joint committee for review of administrative
9 rules. If a proposed rule is modified after the economic impact analysis is submitted
10 under this subsection so that the economic impact of the proposed rule is
11 significantly changed, the agency shall prepare a revised economic impact analysis
12 for the proposed rule as modified. For purposes of this subsection, a significant
13 change includes an increase or a decrease of at least 10 percent or \$50,000, whichever
14 is greater, in the expected implementation and compliance costs reasonably expected
15 to be incurred by or passed along to a majority of the businesses, local governmental
16 units, and individuals as a result of the proposed rule, as identified under sub. (3) (b),
17 or a significant change in the persons expected to be affected by the proposed rule.
18 A revised economic impact analysis shall be prepared and submitted in the same
19 manner as an original economic impact analysis is prepared and submitted.

20 **SECTION 54.** 227.138 (1) (intro.) of the statutes is renumbered 227.138 (1) and
21 amended to read:

22 227.138 (1) The joint committee for review of administrative rules may direct
23 an agency to prepare a retrospective economic impact analysis for any of an agency's
24 rules that are published in the code. The committee may identify one or more specific
25 chapters, sections, or other subunits in the code that are administered by the agency

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1 as the rules that are to be the subject of the analysis and may specify a deadline for
2 the preparation of the analysis.

3 **(1r)** A retrospective economic impact analysis shall contain information on the
4 economic effect of the rules on specific businesses, business sectors, public utility
5 ratepayers, local governmental units, and the state's economy as a whole. When
6 preparing the analysis, the agency or person preparing the analysis shall solicit
7 information and advice from businesses, associations representing businesses, local
8 governmental units, and individuals that have been affected by the rules. The
9 agency or person shall prepare the retrospective economic impact analysis in
10 coordination with local governmental units that have been affected by the rules. The
11 agency or person may request information that is reasonably necessary for the
12 preparation of a retrospective economic impact analysis from other businesses,
13 associations, local governmental units, and individuals and from other agencies.
14 The retrospective economic impact analysis shall include all of the following:

15 **SECTION 55.** 227.138 (1) (a) to (h) of the statutes are renumbered 227.138 (1r)
16 (a) to (h).

17 **SECTION 56.** 227.138 (1g) of the statutes is created to read:

18 227.138 **(1g)** Within 90 days after an agency submits a retrospective economic
19 impact analysis under sub. (2), either cochairperson of the joint committee for review
20 of administrative rules may request an independent retrospective economic impact
21 analysis to be prepared using the same procedure and payment methods described
22 under s. 227.137 (4m) (am) and (b). A person preparing an independent retrospective
23 economic impact analysis under this subsection shall prepare the independent
24 retrospective economic impact analysis for the same rules that were the subject of

SENATE BILL 884**SECTION 56**

1 the agency's analysis under sub. (1) and shall include the information that is
2 required under sub. (1r).

3 **SECTION 57.** 227.138 (2) of the statutes is amended to read:

4 227.138 (2) An agency or person that prepares a retrospective economic impact
5 analysis under sub. (1) or (1g) shall submit that analysis to the department of
6 administration, to the governor, and to the chief clerks of each house of the
7 legislature, who shall distribute the analysis to the presiding officers of their
8 respective houses, to the chairpersons of the appropriate standing committees of
9 their respective houses, as designated by those presiding officers, and to the
10 cochairpersons of the joint committee for review of administrative rules. The agency
11 or person shall also send an electronic copy of the analysis to the legislative reference
12 bureau, in a format approved by the legislative reference bureau, for publication in
13 the register.

14 **SECTION 58.** 227.18 (3m) of the statutes is created to read:

15 227.18 (3m) If, after holding a hearing under this section, an agency makes any
16 changes to the proposed rule, the agency shall do all of the following:

17 (a) Review the statement of scope of the proposed rule prepared under s.
18 227.135 to determine whether a revised statement of scope is required under s.
19 227.135 (4).

20 (b) Review the economic impact analysis for the proposed rule prepared under
21 s. 227.137 to determine whether a revised economic impact analysis is required
22 under s. 227.137 (4).

23 **SECTION 59.** 227.185 of the statutes is amended to read:

24 **227.185 Approval by governor.** After a proposed rule is in final draft form,
25 the agency shall submit the proposed rule to the governor for approval. The governor,

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1 in his or her discretion, may approve or reject the proposed rule. If the governor
2 approves a proposed rule, the governor shall provide the agency with a written notice
3 of that approval. No proposed rule may be submitted to the legislature for review
4 under s. 227.19 (2) unless the governor has approved the proposed rule in writing.
5 The agency shall notify the joint committee for review of administrative rules
6 whenever it submits a proposed rule for approval under this section. This section
7 does not apply to proposed rules prepared by the department of public instruction.

8 **SECTION 60.** 227.20 (3) (a) of the statutes is amended to read:

9 227.20 (3) (a) That the rule was duly promulgated by the agency.

10 **SECTION 61.** 227.20 (3) (c) of the statutes is repealed.

11 **SECTION 62.** 227.24 (1) (e) 1d. of the statutes is amended to read:

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

25 **SECTION 63.** 227.24 (1) (e) 1g. of the statutes is amended to read:

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1 227.24 (1) (e) 1g. Submit the proposed emergency rule in final draft form to the
2 governor for approval. The governor, in his or her discretion, may approve or reject
3 the proposed emergency rule. If the governor approves a proposed emergency rule,
4 the governor shall provide the agency with a written notice of that approval. An
5 agency may not file an emergency rule with the legislative reference bureau as
6 provided in s. 227.20 and an emergency rule may not be published until the governor
7 approves the emergency rule in writing. This subdivision does not apply to proposed
8 emergency rules of the department of public instruction.

9 **SECTION 64.** 227.26 (2) (im) of the statutes is created to read:

10 227.26 (2) (im) *Multiple suspensions.* Notwithstanding pars. (i) and (j), the
11 committee may act to suspend a rule as provided under this subsection multiple
12 times.

13 **SECTION 65.** 227.40 (1) of the statutes is amended to read:

14 227.40 (1) Except as provided in sub. (2), the exclusive means of judicial review
15 of the validity of a rule or guidance document shall be an action for declaratory
16 judgment as to the validity of the rule or guidance document brought in the circuit
17 court for the county where the party asserting the invalidity of the rule or guidance
18 document resides or has its principal place of business or, if that party is a
19 nonresident or does not have its principal place of business in this state, in the circuit
20 court for the county where the dispute arose. The officer or other agency whose rule
21 or guidance document is involved shall be the party defendant. The summons in the
22 action shall be served as provided in s. 801.11 (3) and by delivering a copy to that
23 officer or, if the agency is composed of more than one person, to the secretary or clerk
24 of the agency or to any member of the agency. The court shall render a declaratory
25 judgment in the action only when it appears from the complaint and the supporting

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1 evidence that the rule or guidance document or its threatened application interferes
2 with or impairs, or threatens to interfere with or impair, the legal rights and
3 privileges of the plaintiff. A declaratory judgment may be rendered whether or not
4 the plaintiff has first requested the agency to pass upon the validity of the rule or
5 guidance document in question.

6 **SECTION 66.** 227.40 (2) (intro.) of the statutes is amended to read:

7 227.40 (2) (intro.) The validity of a rule or guidance document may be
8 determined in any of the following judicial proceedings when material therein:

9 **SECTION 67.** 227.40 (2) (e) of the statutes is amended to read:

10 227.40 (2) (e) Proceedings under s. 66.191, 1981 stats., or s. 40.65 (2), 106.50,
11 106.52, 303.07 (7) or 303.21 or ss. 227.52 to 227.58 or under ch. 102, 108 or 949 for
12 review of decisions and orders of administrative agencies if the validity of the rule
13 or guidance document involved was duly challenged in the proceeding before the
14 agency in which the order or decision sought to be reviewed was made or entered.

15 **SECTION 68.** 227.40 (3) (intro.) of the statutes is renumbered 227.40 (3) (ag) and
16 amended to read:

17 227.40 (3) (ag) In any judicial proceeding other than one ~~set out above~~ under
18 sub. (1) or (2), in which the invalidity of a rule or guidance document is material to
19 the cause of action or any defense thereto, the assertion of ~~sueh~~ that invalidity shall
20 be set forth in the pleading of the party ~~so~~ maintaining the invalidity of ~~sueh~~ the rule
21 or guidance document in that proceeding. The party ~~so~~ asserting the invalidity of
22 ~~sueh~~ the rule or guidance document shall, within 30 days after the service of the
23 pleading in which the party sets forth ~~sueh~~ the invalidity, apply to the court in which
24 ~~sueh~~ the proceedings are had for an order suspending the trial of ~~said~~ the proceeding

SENATE BILL 884**SECTION 68**

1 until after a determination of the validity of said the rule or guidance document in
2 an action for declaratory judgment under sub. (1) hereof.

3 **SECTION 69.** 227.40 (3) (a) of the statutes is renumbered 227.40 (3) (ar) and
4 amended to read:

5 227.40 (3) (ar) Upon the hearing of ~~such~~ the application, if the court is satisfied
6 that the validity of ~~such~~ the rule or guidance document is material to the issues of
7 the case, an order shall be entered staying the trial of said proceeding until the
8 rendition of a final declaratory judgment in proceedings to be instituted forthwith
9 by the party asserting the invalidity of ~~such~~ the rule or guidance document. If the
10 court ~~shall find~~ finds that the asserted invalidity of a the rule or guidance document
11 is not material to the case, an order shall be entered denying the application for stay.

12 **SECTION 70.** 227.40 (3) (b) and (c) of the statutes are amended to read:

13 227.40 (3) (b) Upon the entry of a final order in ~~said~~ the declaratory judgment
14 action, it shall be the duty of the party who asserts the invalidity of the rule or
15 guidance document to formally advise the court of the outcome of the declaratory
16 judgment action so brought as ordered by the court. After the final disposition of the
17 declaratory judgment action the court shall be bound by and apply the judgment so
18 entered in the trial of the proceeding in which the invalidity of the rule or guidance
19 document is asserted.

20 (c) Failure to set forth the invalidity of a rule or guidance document in a
21 pleading or to commence a declaratory judgment proceeding within a reasonable
22 time pursuant to ~~such~~ the order of the court or to prosecute ~~such~~ the declaratory
23 judgment action without undue delay shall preclude ~~such~~ the party from asserting
24 or maintaining ~~such~~ that the rule or guidance document is invalid.

25 **SECTION 71.** 227.40 (4) (a) of the statutes is amended to read:

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1 227.40 (4) (a) In any proceeding pursuant to this section for judicial review of
2 a rule or guidance document, the court shall declare the rule or guidance document
3 invalid if it finds that it violates constitutional provisions or exceeds the statutory
4 authority of the agency or was promulgated or adopted without compliance with
5 statutory rule-making or adoption procedures.

6 **SECTION 72.** 227.40 (6) of the statutes is amended to read:

7 227.40 (6) Upon entry of a final order in a declaratory judgment action under
8 sub. (1) with respect to a rule, the court shall send an electronic notice to the
9 legislative reference bureau of the court's determination as to the validity or
10 invalidity of the rule, in a format approved by the legislative reference bureau, and
11 the legislative reference bureau shall publish a notice of that determination in the
12 Wisconsin administrative register under s. 35.93 (2) and insert an annotation of that
13 determination in the Wisconsin administrative code under s. 13.92 (4) (a).

14 **SECTION 73.** 227.46 (1) (h) of the statutes is amended to read:

15 227.46 (1) (h) ~~Make or recommend~~ Recommend findings of fact, conclusions of
16 law and decisions to the extent permitted by law.

17 **SECTION 74.** 227.46 (2) of the statutes is amended to read:

18 227.46 (2) Except as provided in sub. (2m) and s. 227.47 (2), in any contested
19 case which is a class 2 or class 3 proceeding, where a majority of the officials of the
20 agency who are to render the final decision are not present for the hearing, the
21 hearing examiner presiding at the hearing shall prepare a proposed decision,
22 including findings of fact, conclusions of law, order and opinion, in a form that may
23 be adopted by the agency as the final decision in the case under s. 227.47 (3). The
24 proposed decision shall be a part of the record and shall be served by the agency on
25 all parties. Each party adversely affected by the proposed decision shall be given an

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1 opportunity to file objections to the proposed decision, briefly stating the reasons and
2 authorities for each objection, and to argue with respect to them before the officials
3 who are to participate in the decision. The agency may direct whether such
4 argument shall be written or oral. If an agency's decision varies in any respect from
5 the proposed decision of the hearing examiner, the agency's decision shall include an
6 explanation of the basis for each variance.

7 **SECTION 75.** 227.46 (2m) of the statutes is amended to read:

8 227.46 (2m) In any hearing or review assigned to a hearing examiner under
9 s. 227.43 (1) (bg), the hearing examiner presiding at the hearing shall prepare a
10 proposed decision, including findings of fact, conclusions of law, order and opinion,
11 in a form that may be adopted by the agency as the final decision in the case under
12 s. 227.47 (3). The proposed decision shall be a part of the record and shall be served
13 by the division of hearings and appeals in the department of administration on all
14 parties. Each party adversely affected by the proposed decision shall be given an
15 opportunity to file objections to the proposed decision within 15 days, briefly stating
16 the reasons and authorities for each objection, and to argue with respect to them
17 before the administrator of the division of hearings and appeals. The administrator
18 of the division of hearings and appeals may direct whether such argument shall be
19 written or oral. If the decision of the administrator of the division of hearings and
20 appeals varies in any respect from the proposed decision of the hearing examiner, the
21 decision of the administrator of the division of hearings and appeals shall include an
22 explanation of the basis for each variance. The decision of the administrator of the
23 division of hearings and appeals is a final decision of the agency subject to judicial
24 review under s. 227.52. The department of transportation may petition for judicial
25 review.

SENATE BILL 884**SECTION 76**

1 **SECTION 76.** 227.46 (3) (a) of the statutes is repealed.

2 **SECTION 77.** 227.46 (8) of the statutes is repealed.

3 **SECTION 78.** 227.47 (1) of the statutes is amended to read:

4 227.47 (1) Except as provided in sub. (2), every proposed ~~or final~~ decision of an
5 ~~agency or a~~ hearing examiner following a hearing and every final decision of an
6 agency shall be in writing accompanied by findings of fact and conclusions of law.
7 The findings of fact shall consist of a concise and separate statement of the ultimate
8 conclusions upon each material issue of fact without recital of evidence. Every
9 proposed or final decision shall include a list of the names and addresses of all
10 persons who appeared before the agency in the proceeding who are considered
11 parties for purposes of review under s. 227.53. The agency shall by rule establish a
12 procedure for determination of parties.

13 **SECTION 79.** 227.47 (3) of the statutes is created to read:

14 227.47 (3) Every final decision of an agency in a contested case shall be
15 approved, signed, and dated by the agency head and shall include a signed
16 certification stating as follows: "I hereby certify that this decision complies with the
17 requirements of chapter 227 of the Wisconsin Statutes and constitutes the final
18 agency action in this matter. I further certify that this decision contains no standard,
19 requirement, or threshold that is not explicitly required or explicitly permitted by
20 statute or a rule that has been lawfully promulgated and that this decision contains
21 no standard, requirement, or threshold that is more restrictive than a standard,
22 requirement, or threshold contained in the Wisconsin Statutes."

23 **SECTION 80.** 227.57 (11) of the statutes is amended to read:

24 227.57 (11) Upon review of an agency action or decision ~~affecting a property~~
25 ~~owner's use of the property owner's property~~, the court shall accord no deference to

SENATE BILL 884**SECTION 80**

1 the agency's interpretation of law if the agency action or decision restricts the
2 property owner's free use of the property owner's property.

3 **SECTION 81.** 230.08 (2) (sb) of the statutes is repealed.

4 **SECTION 82.** 238.02 (1) of the statutes is amended to read:

5 238.02 (1) There is created an authority, which is a public body corporate and
6 politic, to be known as the "Wisconsin Economic Development Corporation." The
7 members of the board shall consist of ~~6~~ 4 members nominated by the governor, and
8 with the advice and consent of the senate appointed, to serve at the pleasure of the
9 governor; 3 members appointed by the speaker of the assembly, ~~consisting of one~~
10 ~~majority and one minority party representative to the assembly, appointed as are the~~
11 ~~members of standing committees in the assembly, and one person employed in the~~
12 ~~private sector, to serve at the speaker's pleasure; and 3~~ 4-year terms; one member
13 appointed by the minority leader of the assembly to serve a 4-year term; 3 members
14 appointed by the senate majority leader, ~~consisting of one majority and one minority~~
15 ~~party senator, appointed as are members of standing committees in the senate, and~~
16 ~~one person employed in the private sector, to serve at the majority leader's pleasure~~
17 4-year terms; and one member appointed by the minority leader of the senate to
18 serve a 4-year term. The secretary of administration and the secretary of revenue
19 shall also serve on the board as nonvoting members. The board shall elect a
20 chairperson from among its nonlegislative voting members. A vacancy on the board
21 shall be filled in the same manner as the original appointment to the board for the
22 remainder of the unexpired term, if any.

23 **SECTION 83.** 238.02 (2) of the statutes is amended to read:

24 238.02 (2) A majority of the ~~voting~~ appointed members of the board ~~currently~~
25 servicing constitutes a quorum for the purpose of conducting its business and

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1 exercising its powers and for all other purposes, ~~notwithstanding the existence of any~~
2 ~~vacancies~~. Action may be taken by the board upon a vote of a majority of the ~~voting~~
3 appointed members present.

4 **SECTION 84.** 238.02 (3) of the statutes is amended to read:

5 238.02 (3) A chief executive officer shall be nominated by the ~~governor~~ board,
6 and with the advice and consent of the senate appointed, to serve at the pleasure of
7 the ~~governor~~ board. The board may delegate to the chief executive officer any powers
8 and duties the board considers proper. The chief executive officer shall receive such
9 compensation as may be determined by the board.

10 **SECTION 85.** 238.04 (15) of the statutes is created to read:

11 238.04 (15) Appoint and supervise the economic development liaison project
12 position created in 2017 Wisconsin Act 58, section 61 (1).

13 **SECTION 86.** 238.399 (3) (a) of the statutes is amended to read:

14 238.399 (3) (a) The corporation may designate ~~not more than 30~~ any number
15 of enterprise zones in this state.

16 **SECTION 87.** 238.399 (3) (am) of the statutes is created to read:

17 238.399 (3) (am) The corporation may not designate a new enterprise zone
18 under par. (a) except as follows:

19 1. Before the corporation designates a new enterprise zone, the corporation
20 shall notify the joint committee on finance in writing of the corporation's intention
21 to designate a new enterprise zone. The notice shall describe the new zone and the
22 purposes for which the corporation proposes to designate the new zone.

23 2. If, within 14 working days after the date of the corporation's notice under
24 subd. 1., the cochairpersons of the joint committee on finance do not notify the
25 corporation that the committee has scheduled a meeting to review the corporation's

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1 proposal, the corporation may designate the new enterprise zone as proposed in the
2 corporation's notice. If, within 14 working days after the date of the corporation's
3 notice under subd. 1., the cochairpersons of the committee notify the corporation that
4 the committee has scheduled a meeting to review the corporation's proposal, the
5 corporation may designate the new enterprise zone only upon approval of the
6 committee.

7 **SECTION 88.** 238.399 (3) (e) of the statutes is repealed.

8 **SECTION 89.** 281.665 (5) (d) of the statutes is amended to read:

9 281.665 (5) (d) Notwithstanding pars. (a) to (c), during the 2017-19 and
10 2019-21 fiscal ~~biennium~~ bienniums, the department shall consider an applicant to
11 be eligible for a cost-sharing grant for a project under this section if the project is
12 funded or executed in whole or in part by the U.S. army corps of engineers under 33
13 USC 701s.

14 **SECTION 90.** 301.03 (16) of the statutes is created to read:

15 301.03 (16) At the request of the legislature, submit to the legislature under
16 s. 13.172 (2) a report that includes the following information and post the report on
17 the department's website:

18 (a) If, since the previous report was submitted or during a date range specified
19 in the request, an individual was pardoned for a crime or was released from a term
20 of imprisonment without completing his or her sentence, the name of the individual,
21 the pertinent crime, and the name of the person who authorized the action.

22 (b) If an individual who appears on a report submitted under this subsection
23 is convicted of a crime, the name of that individual and the crime for which he or she
24 was convicted.

25 **SECTION 91.** 343.165 (8) of the statutes is created to read:

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1 343.165 (8) Notwithstanding subs. (1) to (4), for an applicant requesting that
2 an identification card be provided without charge for purposes of voting, all of the
3 following apply:

4 (a) Except as provided in par. (b), if a person is unable to provide proof of name
5 and date of birth, and the documents are unavailable to the person, the person may
6 make a written petition to the department for an exception to the requirements of
7 sub. (1) (a) or (b). The application shall include proof of identity and all of the
8 following:

9 1. A certification of the person's name, date of birth, and current residence
10 street address on the department's form.

11 2. An explanation of the circumstances by which the person is unable to provide
12 proof of name and date of birth.

13 3. Whatever documentation is available that states the person's name and date
14 of birth.

15 (b) 1. If a person applies for and requests an identification card without charge
16 for the purposes of voting and the person's proof of name and date of birth or of proof
17 of citizenship, legal permanent resident status, conditional resident status, or legal
18 presence is unavailable, the person may make a written petition to the department
19 for an exception to the requirement for which proof is unavailable. The department
20 shall provide appropriate translation for any person who is unable to read or
21 understand the petition process instructions and related communications under this
22 subsection or s. 343.50 (1) (c) 2. The petition shall include the person's statement
23 under oath or affirmation of all of the following:

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1 a. That the person is unable to provide proof of name and date of birth or proof
2 of citizenship, legal permanent resident status, conditional resident status, or legal
3 presence.

4 b. That the documents are unavailable to the person.

5 c. His or her name, date of birth, place of birth, and such other birth record
6 information requested by the department, or the person's alien or U.S. citizenship
7 and immigration service number or U.S. citizenship certificate number.

8 2. Upon receiving a petition that meets the requirements under subd. 1., the
9 department of transportation shall forward the petition to the central office of its
10 division of motor vehicles for processing. The department of transportation shall
11 provide the person's birth record information to the department of health services,
12 for the sole purpose of verification by the department of health services of the
13 person's birth certificate information or the equivalent document from another
14 jurisdiction, other than a province of the Dominion of Canada, or to a federal agency
15 for the sole purpose of verifying the person's certificate of birth abroad issued by the
16 federal department of state, or of verifying the person's alien or U.S. citizenship and
17 immigration service number or U.S. citizenship certificate number. The department
18 of transportation shall open a file containing the petition and shall create therein a
19 report with a dated record of events, including all communication to or with the
20 applicant. The department of transportation may not complete processing of the
21 application prior to receiving verification under this subdivision, except as provided
22 in subd. 3.

23 3. If the department does not receive verification under subd. 2. within 30 days
24 or receives notice under subd. 2. that the birth information provided in the
25 application does not match that of the birth record custodian, the department shall

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1 promptly notify the person in writing of that failure to verify and request the person
2 contact the department within 10 days. If the person does not respond within 10
3 days, the department shall send the person a 2nd letter with substantially similar
4 contents. If the person does not respond to the 2nd letter within 10 days and the
5 department knows the person's telephone number, the department shall call the
6 person on the telephone and notify the person that the birth information was not
7 verified and request the person provide additional information within 10 days. If 30
8 days have elapsed since the date of the first letter sent under this subdivision without
9 contact from the person, the department shall suspend the investigation and send
10 written notice that the person has not responded, that the department has no further
11 leads for it to locate or obtain secondary documentation or verification of birth
12 information, that the department has suspended its investigation or research until
13 such time as the person contacts the department, and that if within 180 days after
14 the date of the written notice the person fails to contact the department the petition
15 will be denied and no further identification card receipts will be issued under s.
16 343.50 (1) (c) 2. If the person fails to contact the department within 180 days after
17 the department suspends the investigation, the department shall deny the petition
18 in writing and shall inform the person that the department will resume the
19 investigation if the person contacts the department to discuss the petition.
20 Whenever the applicant contacts the department to discuss the petition, the
21 investigation under this subdivision shall begin anew, notwithstanding any prior
22 denial due to the person's failure to timely respond. The applicant shall act in good
23 faith and use reasonable efforts to provide additional information that could
24 reasonably lead the department to discover correct birth information or secondary
25 documentation as described in subd. 3g., to assist the department in processing the

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1 application. The department shall investigate the petition and any additional
2 information provided under this subdivision with prompt and due diligence and shall
3 use reasonable efforts to locate and obtain the secondary documentation by pursuing
4 leads provided by the person. Investigations may only be completed within the
5 division of motor vehicles' central office by employees whose regular job duties
6 include investigation and fraud detection and prevention. If the investigation
7 discovers new or corrected birth information, the department of transportation shall
8 resubmit the new or corrected birth information to the department of health services
9 for verification under subd. 2. The department of transportation shall pay any
10 actual, necessary fees required by the record custodian to obtain the secondary
11 documentation.

12 3g. If the department of health services does not verify the birth record
13 information within 30 days, the department of transportation may issue an
14 identification card to the person only if the department of transportation receives
15 verification under subd. 2., if the person provides proof of name and date of birth or
16 proof of citizenship, legal permanent resident status, conditional resident status or
17 legal presence, or if the department of transportation receives other secondary
18 documentation acceptable to the department of transportation and deemed
19 sufficient under subd. 3., which may include the following:

- 20 a. Baptismal certificate.
- 21 b. Hospital birth certificate.
- 22 c. Delayed birth certificate.
- 23 d. Census record.
- 24 e. Early school record.
- 25 f. Family Bible record.

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- 1 g. Doctor's record of post-natal care.
- 2 h. Other documentation deemed acceptable to the department of
3 transportation, within the department's reasonable discretion.
- 4 4. In this paragraph, "proof of citizenship, legal permanent resident status,
5 conditional resident status or legal presence" means any of the following:
- 6 a. A U.S. state or local government issued certificate of birth.
- 7 b. Valid U.S. passport.
- 8 c. Valid foreign passport with appropriate immigration documents, which shall
9 include or be accompanied by federal form I-94, arrival and departure record.
- 10 d. Certificate of U.S. citizenship.
- 11 e. A U.S. Certificate of naturalization.
- 12 f. Valid department of homeland security/U.S. citizenship and immigration
13 services federal form I-551, resident alien registration receipt card, issued since
14 1997.
- 15 g. Valid department of homeland security/U.S. citizenship and immigration
16 services federal form I-688, temporary resident identification card.
- 17 h. Valid department of homeland security/U.S. citizenship and immigration
18 services federal form I-688B or I-766, employment authorization document.
- 19 i. Valid department of homeland security/U.S. citizenship and immigration
20 services federal form I-571, refugee travel document.
- 21 j. Department of homeland security/U.S. citizenship and immigration services
22 federal form I-797, notice of action.
- 23 k. Department of homeland security/transportation security administration
24 transportation worker identification credential.

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1 L. A U.S. department of state reception and placement program assurance
2 form (refugee version), which shall include or be accompanied by federal form I-94,
3 arrival and departure record.

4 m. Documentary proof specified in s. 343.14 (2) (es), that is approved by the
5 appropriate federal authority.

6 5. In this paragraph, “proof of identity” means a supporting document
7 identifying the person by name and bearing the person’s signature, a reproduction
8 of the person’s signature, or a photograph of the person. Acceptable supporting
9 documents include:

10 a. A valid operator’s license, including a license from another jurisdiction,
11 except a province of the Dominion of Canada, bearing a photograph of the person.

12 b. Military discharge papers.

13 c. A U.S. government and military dependent identification card.

14 d. A valid photo identification card issued by Wisconsin or another jurisdiction,
15 except a province of the Dominion of Canada, bearing a photograph of the person.

16 e. A marriage certificate or certified copy of judgment of divorce.

17 f. A social security card issued by the social security administration.

18 g. Any document described under subd. 6., if it bears a photograph of the person
19 and was not used as proof of name and date of birth.

20 h. Department of homeland security/transportation security administration
21 transportation worker identification credential.

22 6. In this paragraph, “proof of name and date of birth” means any of the
23 following:

24 a. For a person born in Wisconsin, a copy of the person’s Wisconsin birth
25 certificate issued and certified in accordance with s. 69.21.

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1 b. For a person born in another jurisdiction, other than a province of the
2 Dominion of Canada, a certified copy of his or her birth certificate or the equivalent
3 document from that other jurisdiction or a certificate of birth abroad issued by the
4 federal department of state.

5 c. A U.S. passport.

6 d. A valid, unexpired passport issued by a foreign country with federal I-551
7 resident alien registration receipt card or federal I-94 arrival and departure record
8 that bears a photograph of the person and identifies the person's first and last names,
9 and the person's day, month, and year of birth.

10 e. A Wisconsin operator's license bearing a photograph of the person.

11 f. A Wisconsin identification card issued under s. 343.50, bearing a photograph
12 of the person, other than an identification card issued under s. 343.50 (1) (c) 2.

13 g. A federal I-551 "permanent resident alien registration receipt card."

14 h. A federal I-94 "parole edition" or "refugees version" arrival-departure
15 record, together with a certification, on the department's form, by the person, of the
16 person's name and date of birth, a copy of a federal department of state refugee data
17 center reception and placement program assurance form and a letter from the
18 person's sponsoring agency on its letterhead, supporting the person's application for
19 a Wisconsin identification card or operator's license and confirming the person's
20 identification. Applicants who are unable to provide a reception and placement
21 program assurance form may be issued a Wisconsin identification card or operator's
22 license, but only after their identification has been confirmed by the U.S. citizenship
23 and immigration services.

24 i. A U.S. certificate of naturalization.

25 j. A certificate of U.S. citizenship.

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1 k. A federal temporary resident card or employment authorization card, I-688,
2 I-688A, I-688B, and I-766.

3 L. A Native American identification card that is issued by a federally
4 recognized tribe or a band of a federally recognized tribe, is issued in Wisconsin,
5 includes a photograph and signature or reproduction of a signature of the person, and
6 has been approved by the secretary for use as identification.

7 m. A court order under seal related to the adoption or divorce of the individual
8 or to a name or gender change that includes the person's current full legal name, date
9 of birth, and, in the case of a name change or divorce order, the person's prior name.

10 n. An armed forces of the U.S. common access card or DD Form 2 identification
11 card issued to military personnel.

12 o. Department of homeland security/transportation security administration
13 transportation worker identification credential.

14 7. In this paragraph, "unavailable" means that the applicant does not have the
15 document and would be required to pay a government agency to obtain it.

16 (c) The administrator may delegate to the deputy administrator or to a bureau
17 director, as described in s. 15.02 (3) (c) 2., whose regular responsibilities include
18 driver licensing and identification card issuance, the authority to accept or reject
19 such extraordinary proof of name, date of birth, or U.S. citizenship under this
20 subsection.

21 (e) The denial of a petition under par. (b) is subject to judicial review in the
22 manner provided in ch. 227 for the review of administrative decisions.

23 (f) If the administrator, or delegate described in par. (c), determines that an
24 applicant has knowingly made a false statement or knowingly concealed a material
25 fact or otherwise committed a fraud in an application, petition, or additional

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1 information, the department shall immediately suspend the investigation, shall
2 notify the person in writing of the suspension and the reason for the suspension, and
3 refer any suspected fraud to law enforcement.

4 (g) A person whose petition is suspended or denied due to a failure to respond
5 timely may revive the petition at any time by contacting the department to discuss
6 the petition application. If a person revives a petition, the department shall
7 immediately issue, and shall continue to reissue, an identification card receipt to the
8 person as provided in s. 343.50 (1) (c) 2., except that the department shall first
9 require the person to take a photograph if required under s. 343.50 (1) (c) 2.

10 (h) The department shall grant a petition if the department concludes, on the
11 basis of secondary documentation or other corroborating information, that it is more
12 likely than not that the name, date of birth, and U.S. citizenship provided in the
13 application is correct.

14 **SECTION 92.** 343.50 (1) (c) of the statutes is renumbered 343.50 (1) (c) 1. and
15 amended to read:

16 343.50 (1) (c) 1. The department may issue a receipt to any applicant for an
17 identification card, and shall issue a receipt to an applicant requesting an
18 identification card under sub. (5) (a) 3., which receipt shall constitute a temporary
19 identification card while the application is being processed and shall be valid for a
20 period not to exceed 60 days. If the application for an identification card is processed
21 under the exception specified in s. 343.165 (7) or (8), the receipt shall include the
22 marking specified in sub. (3) (b).

23 **SECTION 93.** 343.50 (1) (c) 2. of the statutes is created to read:

24 343.50 (1) (c) 2. If the department issues a receipt to an applicant petitioning
25 the department under s. 343.165 (8), all of the following apply:

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1 a. The department shall issue the receipt not later than the 6th working day
2 after the person made the petition and shall deliver the receipt by 1st class mail,
3 except that if a petition is filed or revived within 7 days before or 2 days after a
4 statewide election the department shall issue a receipt not later than 24 hours after
5 the petition is filed or revived and shall deliver the receipt by overnight or next-day
6 mail. The department shall issue a new receipt to the person not later than 10 days
7 before the expiration date of the prior receipt, and having a date of issuance that is
8 the same as the expiration date of the prior receipt. The department shall issue no
9 receipt to a person after the denial of a petition under s. 343.165 (8), unless the person
10 revives an investigation. The department shall continue to reissue identification
11 card receipts to a person unless the department cancels the identification card
12 receipt upon the circumstances specified in sub. (10), upon the issuance of an
13 operator's license or identification card to the person, upon the person's request,
14 upon the denial of the application, upon return to the department of a receipt as
15 nondeliverable, upon the person's failure to contact the department to discuss the
16 petition for a period of 180 days or more, or whenever the department receives
17 information that prohibits issuance of an identification card under sub. (1) (c). The
18 department shall require the person to take a photograph prior to reissuing an
19 identification card receipt if the photograph of the person on file with the department
20 is 8 or more years old.

21 b. An identification card receipt issued under this subdivision shall constitute
22 a temporary identification card while the application is being processed under s.
23 343.165 (8) and shall be valid for a period not to exceed the period specified in sub.
24 (1) (c). The department shall clearly mark the receipt "FOR VOTING PURPOSES
25 ONLY" as validated for use for voting as provided in ss. 5.02 (6m) (d) and 6.79 (2) (a).

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1 A receipt issued under this subsection shall contain the information specified under
2 s. 343.17 (3), including the date of issuance, the expiration date, the name and
3 signature of the person to whom it was issued, and, except as authorized in sub. (4g),
4 a photograph of the individual to whom it was issued, and may contain such further
5 information as the department deems necessary.

6 c. The department shall issue a replacement identification card receipt under
7 subd 1. a. upon request of the person to whom it is issued if the receipt is lost or
8 destroyed.

9 d. Notwithstanding subd. 2. a., the department shall cancel or refuse to issue
10 an identification card receipt under this subsection upon the circumstances specified
11 in sub. (10), upon the issuance of an operator's license or identification card to the
12 person, upon the person's request, upon the denial of the application, upon return to
13 the department of a receipt as nondeliverable, or whenever the department receives
14 information that prohibits issuance of an identification card under subd. 1.

15 e. Whenever any person, after receiving an identification card receipt under
16 this subdivision, moves from the address named in the application or in the receipt
17 issued to him or her or is notified by the local authorities or by the postal authorities
18 that the address so named has been changed, the person shall, within 30 days, notify
19 the department of his or her change of address. Upon receiving a notice of change of
20 address, the department shall promptly issue a new receipt under subd. 2. a. showing
21 the correct address and having the expiration date of the prior receipt.

22 **SECTION 94.** 343.50 (3) (b) of the statutes is amended to read:

23 343.50 (3) (b) If an identification card is issued based upon the exception
24 specified in s. 343.165 (7) or (8), the card shall, in addition to any other required

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1 legend or design, be of the design specified under s. 343.17 (3) (a) 14. and include a
2 marking similar or identical to the marking described in s. 343.03 (3r).

3 **SECTION 95.** 343.50 (3) (c) of the statutes is created to read:

4 343.50 (3) (c) 1. Notwithstanding par. (a), the department may issue an
5 identification card bearing a name other than the name that appears on a supporting
6 document if the person provides evidence acceptable to the department that the
7 person has used the name in a manner that qualifies the name as being legally
8 changed under the common law of Wisconsin, including evidence of the person's prior
9 name, changed name, the length of time the person has consistently and
10 continuously used the changed name, an affirmation that the person no longer uses
11 the prior name, and an affirmation that the person did not change his or her name
12 for a dishonest or fraudulent purpose or to the injury of any other person. The
13 department shall mark an identification card issued under this subdivision in the
14 manner described in s. 343.03 (3r).

15 2. Notwithstanding par. (a), the department shall approve a name change
16 requested by a person who cannot provide supporting documentation of a lawful
17 change of name but who does one of the following:

18 a. Provides proof of identity in the new name, and the department receives from
19 the federal social security administration evidence or confirmation of the name
20 change.

21 b. Applies for an identification card and provides an affidavit declaring all facts
22 required under subd. 1. to prove a name change under the common law of Wisconsin.

23 **SECTION 96.** 801.50 (3) (b) of the statutes is amended to read:

24 801.50 (3) (b) All actions relating to the validity or invalidly of a rule or
25 guidance document shall be venued as provided in s. 227.40 (1).

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1 **SECTION 97.** 803.09 (2m) of the statutes is created to read:

2 803.09 **(2m)** When a party to an action challenges in state or federal court the
3 constitutionality of a statute, facially or as applied, or challenges a statute as
4 violating or preempted by federal law, as part of a claim or affirmative defense, the
5 assembly, the senate, and the state legislature may intervene at any time in the
6 action as a matter of right by serving a motion upon the parties as provided in s.
7 801.14.

8 **SECTION 98.** 806.04 (11) of the statutes is amended to read:

9 806.04 **(11)** PARTIES. When declaratory relief is sought, all persons shall be
10 made parties who have or claim any interest which would be affected by the
11 declaration, and no declaration may prejudice the right of persons not parties to the
12 proceeding. In any proceeding which involves the validity of a municipal ordinance
13 or franchise, the municipality shall be made a party, and shall be entitled to be heard.
14 If a statute, ordinance or franchise is alleged to be unconstitutional, or to be in
15 violation of or preempted by federal law, the attorney general shall also be served
16 with a copy of the proceeding and, except as provided under this subsection, be
17 entitled to be heard. If a statute is alleged to be unconstitutional, or to be in violation
18 of or preempted by federal law, the speaker of the assembly, the president of the
19 senate, and the senate majority leader shall also be served with a copy of the
20 proceeding, and the assembly, the senate, and the state legislature are entitled to be
21 heard. If the assembly, the senate, or the joint committee on legislative organization
22 intervenes as provided under s. 803.09 (2m), the assembly shall represent the
23 assembly, the senate shall represent the senate, and the joint committee on
24 legislative organization shall represent the state. In an action involving the
25 constitutionality of a statute, or challenging a statute as violating or preempted by

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1 federal law, if the joint committee on legislative organization determines at any time
2 that the interests of the state will be best represented by special counsel appointed
3 by the legislature, it shall appoint special counsel to represent state defendants and
4 act instead of the attorney general and the attorney general may not participate in
5 the action. Special counsel appointed under this subsection shall have the powers
6 of the attorney general with respect to the litigation to which special counsel has been
7 appointed. In any proceeding under this section in which the constitutionality,
8 construction or application of any provision of ch. 227, or of any statute allowing a
9 legislative committee to suspend, or to delay or prevent the adoption of, a rule as
10 defined in s. 227.01 (13) is placed in issue by the parties, the joint committee for
11 review of administrative rules shall be served with a copy of the petition and, with
12 the approval of the joint committee on legislative organization, shall be made a party
13 and be entitled to be heard. ~~In any proceeding under this section in which the~~
14 ~~constitutionality, construction or application of any provision of ch. 13, 20, 111, 227~~
15 ~~or 230 or subch. I, III or IV of ch. 16 or s. 753.075, or of any statute allowing a~~
16 ~~legislative committee to suspend, or to delay or prevent the adoption of, a rule as~~
17 ~~defined in s. 227.01 (13) is placed in issue by the parties, the joint committee on~~
18 ~~legislative organization shall be served with a copy of the petition and the joint~~
19 ~~committee on legislative organization, the senate committee on organization or the~~
20 ~~assembly committee on organization may intervene as a party to the proceedings and~~
21 ~~be heard.~~

22 **SECTION 99.** 809.13 of the statutes is amended to read:

23 **809.13 Rule (Intervention).** A person who is not a party to an appeal may
24 file in the court of appeals a petition to intervene in the appeal. A party may file a
25 response to the petition within 11 days after service of the petition. The court may

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1 grant the petition upon a showing that the petitioner's interest meets the
2 requirements of s. 803.09 (1) ~~or~~, (2), or (2m).

3 **SECTION 100.** Subchapter VIII (title) of chapter 893 [precedes 893.80] of the
4 statutes is amended to read:

CHAPTER 893

SUBCHAPTER VIII

CLAIMS AGAINST GOVERNMENTAL

BODIES, OFFICERS AND EMPLOYEES;

ACTIONS ALLEGING A STATUTE ISUNCONSTITUTIONAL OROTHERWISE INVALID

12 **SECTION 101.** 893.825 of the statutes is created to read:

13 **893.825 Actions alleging a statute is unconstitutional or in violation of**
14 **or preempted by federal law. (1)** In an action in which a statute is alleged to be
15 unconstitutional, or to be in violation of or preempted by federal law, the attorney
16 general shall be served with a copy of the proceeding and, except as provided in sub.
17 (2), is entitled to represent the state and be heard.

18 **(2)** In an action in which a statute is alleged to be unconstitutional, or to be in
19 violation of or preempted by federal law, the speaker of the assembly, the president
20 of the senate, and the senate majority leader shall also be served with a copy of the
21 proceeding and the assembly, the senate, and the joint committee on legislative
22 organization are entitled to be heard.

23 **SECTION 102. Nonstatutory provisions.**

24 **(1) INTERVENTION BY ASSEMBLY, SENATE, AND JOINT COMMITTEE ON LEGISLATIVE**
25 **ORGANIZATION.** The assembly, senate, and joint committee on legislative organization

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1 may intervene as permitted under s. 803.09 (2m) in any litigation pending in state
2 or federal court on the effective date of this subsection. If the joint committee on
3 legislative organization intervenes and appoints special counsel to represent state
4 defendants as set forth under s. 806.04 (11) or 893.825, the attorney general shall
5 notify the court of the substitution of counsel by special counsel appointed by the joint
6 committee on legislative organization to represent the state defendants and may not
7 participate in the action.

8 (2) WEDC; STAGGERING OF INITIAL TERMS. Notwithstanding the length of terms
9 specified for the members of the board of directors of the Wisconsin Economic
10 Development Corporation under s. 238.02 (1), the initial members appointed by the
11 speaker and minority leader of the assembly and the majority leader and minority
12 leader of the senate beginning on the effective date of this subsection shall be
13 appointed for terms expiring as follows:

14 (a) The terms of 2 members appointed by the speaker of the assembly, the
15 member appointed by the assembly minority leader, 2 members appointed by the
16 senate majority leader, and the member appointed by the senate minority leader,
17 shall expire on October 1, 2022.

18 (b) The terms of one member appointed by the speaker of the assembly and one
19 member appointed by the senate majority leader shall expire on October 1, 2024.

20 (3) WEDC; CURRENT BOARD MEMBERS. The members of the board of directors of
21 the Wisconsin Economic Development Corporation serving at the pleasure of the
22 speaker of the assembly and senate majority leader on the day before the effective
23 date of this subsection shall continue to serve at pleasure pending the appointment
24 of members under sub. (2), but may not serve after January 6, 2019, unless appointed
25 under sub. (2).

SENATE BILL 884**SECTION 103****1 SECTION 103. Fiscal changes.**

2 (1) SETTLEMENT FUNDS. Notwithstanding s. 20.001 (3) (c), from the
3 appropriation account under s. 20.455 (3) (g), on the effective date of this subsection,
4 there is lapsed to the general fund the unencumbered balance of any settlement
5 funds in that appropriation account, as determined by the attorney general.

6 (2) OFFICE OF SOLICITOR GENERAL POSITIONS. In the schedule under s. 20.005 (3)
7 for the appropriation to the department of justice under s. 20.455 (1) (gh), the dollar
8 amount for fiscal year 2018-19 is decreased by \$320,000 to decrease the authorized
9 FTE positions for the department by 1.0 PR solicitor general position and 3.0 PR
10 deputy solicitor general positions on January 1, 2019.

11 (3) DEPARTMENT OF JUSTICE GIFTS AND GRANTS. Notwithstanding s. 20.001 (2) (b),
12 any moneys encumbered under the appropriation accounts under s. 20.455 (2) (gb)
13 and (3) (g) before the effective date of this subsection may be expended pursuant to
14 the terms of the encumbrance.

15 SECTION 104. Initial applicability.

16 (1) AGENCY PUBLICATIONS. The treatment of s. 227.05 with respect to printed
17 publications first applies to guidance documents, forms, pamphlets, or other
18 informational materials that are printed 60 days after the effective date of this
19 subsection.

20 (2) GROUP INSURANCE BOARD. The treatment of s. 15.07 (1) (b) 24. first applies
21 to a member of the group insurance board who is appointed by the governor on the
22 effective date of this subsection.

23 (3) GUBERNATORIAL APPROVALS OF PROPOSED RULES. The treatment of ss. 227.135
24 (3), 227.185, and 227.24 (1) (e) 1d. and 1g., the renumbering and amendment of s.
25 227.135 (2), and the creation of s. 227.135 (2) (a) 2. first apply to a proposed rule or

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1 emergency rule whose statement of scope is submitted to the legislative reference
2 bureau for publication under s. 227.135 (3) on the effective date of this subsection.

3 (4) FINAL DECISION OF AN AGENCY. The treatment of ss. 227.46 (1) (h), (2), (2m),
4 (3) (a) and (8) and 227.47 (1) and (3) first applies to requests for hearings made on
5 the effective date of this subsection.

6 **SECTION 105. Effective date.**

7 (1) FINAL DECISIONS IN CONTESTED CASES. The treatment of s. 227.05 takes effect
8 on the first day of the 7th month beginning after publication.

9 (END)