

1999 DRAFTING REQUEST

Bill

Received: 12/01/1999

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Robert Welch (608) 266-0751

By/Representing: John Stolzenberg

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Administrative Law

Extra Copies: John Stolzenberg, LC

Pre Topic:

No specific pre topic given

Topic:

Creating an administrative rules task force

Instructions:

Same as 99-3800, without LC notes

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Required</u>
/?	nelsorp1 12/01/1999	csicilia 12/06/1999		_____		State
/1			jfrantze 12/06/1999	_____	lrb_docadmin 12/06/1999	lrb_docadmin 01/07/2000

FE Sent For:

02-08-00
↪

<END>

1999 DRAFTING REQUEST

Bill

Received: **12/01/1999**

Received By: **nelsorp1**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Welch (608) 266-0751**

By/Representing: **John Stolzenberg**

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Alt. Drafters:

Subject: **Administrative Law**

Extra Copies: **John Stolzenberg, LC**

Pre Topic:

No specific pre topic given

Topic:

Creating an administrative rules task force

Instructions:

Same as 99-3800, without LC notes

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nelsorp1 12/01/1999	csicilia 12/06/1999		_____			State
/1			jfrantze 12/06/1999	_____	lrb_docadmin 12/06/1999		

FE Sent For:

<END>

*for senate
per shane
in Welch's office*

1999 DRAFTING REQUEST

Bill

Received: 12/01/1999

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Robert Welch (608) 266-0751

By/Representing: John Stolzenberg

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Administrative Law

Extra Copies: John Stolzenberg, LC

Pre Topic:

No specific pre topic given

Topic:

Creating an administrative rules task force

Instructions:

Same as 99-3800, without LC notes

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nelsorp1	1 cjs 12/6/99	J 01/21/00	Jb/hk 12/6			

FE Sent For:

<END>

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

regen.

1 **AN ACT** to repeal 20.765 (2) (c), 20.923 (6) (aLi) and 230.08 (2) (am); and to create
 2 20.765 (2) (c), 20.923 (6) (aLi) and 230.08 (2) (am) of the statutes; relating to:
 3 creating an administrative rules task force and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in the bill.

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:

~~PRELIMINARY NOTE. This bill was prepared for the joint legislative council's special committee on state strategies for economic development.~~

The bill creates an administrative rules task force composed of ~~10~~ ^{ten} nonlegislative members appointed by the legislative leadership. The bill directs the task force to review existing administrative rules and agency statements of policy and interpretations of statutes selected by the task force to ensure that each reviewed rule, statement or interpretation satisfies the 11 standards specified in the bill.

The bill directs the task force to report its findings and recommendations: (1) that relate to amending a rule, statement or interpretation, to the agency that promulgated the rule, statement or interpretation; (2) that relate to amending a statute interpreted by a rule, statement or interpretation; to the appropriate standing committees of the

WPO:
Use Analysis
Components

WFO: Use analysis components

legislature; and ~~§~~3) that relate to promulgating a statement or interpretation as a rule, to the joint committee for review of administrative rules (JCRAR).

The task force may also recommend to ~~the~~ JCRAR that an existing rule be suspended if the task force determines, based on testimony received by the task force at a hearing on the rule, that the rule does one or more of the following: ~~§~~1) is not authorized by the statute; ~~§~~2) conflicts with state law; ~~§~~3) is affected by a change in circumstances since enactment of the earliest law upon which the rule is based; ~~§~~4) is arbitrary and capricious; or ~~§~~5) imposes an undue hardship. The JCRAR may review the suspension recommendation in a 30-day passive review process. If ~~the~~ JCRAR does not act on the recommendation or if ~~the~~ JCRAR acts and suspends the rule, the rule is temporarily suspended, and the legislature must review the suspension and either repeal the rule or allow the rule to remain in effect under the same process that is used when ~~the~~ JCRAR suspends an existing rule ~~under s. 227.20, Stats.~~

The bill directs state agencies to provide requested information to the task force and to report to the task force the specified information on each existing chapter in the Wisconsin Administrative Code promulgated by the agency. ~~No FF~~

The bill authorizes the task force's chairperson to employ a task force director outside of the classified civil service and other project positions. The bill appropriates \$104,000 general purpose revenue (GPR) in fiscal year (FY) 1999-2000 and \$197,000 GPR in FY 2000-2001 for staff and administrative expenses.

The bill dissolves the task force and terminates the task force's staff positions on July 1, 2001.

two

1 SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

3 1999-00 2000-01

4 20.765 Legislature

5 (2) SPECIAL STUDY GROUPS

6 (c) Administrative rules task force GPR B 104,000 197,000

7 SECTION 2. 20.765 (2) (c) of the statutes is created to read:

8 20.765 (2) (c) *Administrative rules task force.* For the administrative rules task
9 force, biennially, the amounts in the schedule to perform its functions under 1999
10 Wisconsin Act (this act), section 8.

11 SECTION 3. 20.765 (2) (c) of the statutes, as created by 1999 Wisconsin
12 Act (this act), is repealed.

13 SECTION 4. 20.923 (6) (aLi) of the statutes is created to read:

1 20.923 (6) (aLi) Administrative rules task force: director and staff employed
2 under 1999 Wisconsin Act (this act), section 8.

3 **SECTION 5.** 20.923 (6) (aLi) of the statutes, as created by 1999 Wisconsin Act
4 (this act), is repealed.

5 **SECTION 6.** 230.08 (2) (am) of the statutes is created to read:

6 230.08 (2) (am) The director and all staff of the administrative rules task force
7 employed under 1999 Wisconsin Act (this act), section 8.

8 **SECTION 7.** 230.08 (2) (am) of the statutes, as created by 1999 Wisconsin Act
9 (this act), is repealed.

10 **SECTION 8. Nonstatutory provisions; administrative rules task force.**

11 (1) **DEFINITIONS.** In this SECTION:

12 (a) “Agency” has the meaning given in section 227.01 (1) of the statutes.

13 (b) “Rule” has the meaning given in section 227.01 (13) of the statutes.

14 (c) “Small business” has the meaning given in section 227.114 (1) (a) of the
15 statutes.

16 (d) “Task force” means the administrative rules task force created in this
17 SECTION.

18 (2) **CREATION.** There is created the administrative rules task force in the
19 legislative branch of state government. The task force shall consist of the following
20 nonlegislative members:

21 (a) Three members appointed by the speaker of the assembly.

22 (b) Three members appointed by the president of the senate.

23 (c) Two members appointed by the assembly minority leader.

24 (d) Two members appointed by the senate minority leader.

~~NOTE: The task force is created in the legislative branch to assure its independence. It is called a "task force" to distinguish it from the JCRAR.~~

1 (3) POWERS AND DUTIES.

2 (a) *Duties.* The task force shall conduct a review of rules and agency statements
3 of policy and interpretations of statutes in effect on the effective date of this
4 paragraph that are identified by the task force based upon complaints and public
5 comments received by the task force and concerns of task force members. The task
6 force shall ensure that each reviewed rule, statement or interpretation meets all of
7 the following criteria:

- 8 1. It is current and necessary.
- 9 2. It does not conflict with related federal statutes and regulations.
- 10 3. If a rule, it was properly promulgated as a rule.
- 11 4. If a rule, it was promulgated with adequate consideration of its effect on
12 businesses, including its effect on small businesses under section 227.114 (2) of the
13 statutes.
- 14 5. It does not discourage innovation and entrepreneurial business activity.
- 15 6. It is not detrimental to a healthy, statewide economy.
- 16 7. It is authorized by statute.
- 17 8. It does not conflict with state law.
- 18 9. It is not affected by a change in circumstances since enactment of the earliest
19 law upon which the rule, statement or interpretation is based.
- 20 10. It is not arbitrary and capricious.
- 21 11. It does not impose an undue hardship.

~~NOTE: With respect to subd. 4., when an agency proposes a rule that may have an effect on small businesses, s. 227.114 (2) directs the agency to consider each of the following methods for reducing the impact of the rule on small businesses: (1) the establishment of less stringent compliance or reporting requirements for small businesses; (2) the establishment of less stringent schedules or deadlines for compliance~~

or reporting requirements for small businesses; (3) the consolidation or simplification of compliance or reporting requirements for small businesses; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the rule, and (5) the exemption of small businesses from any or all requirements of the rule.

The task force's review under subs. 5. and 6. are intended to advance the special committee's mission statement: "Within 10 years, Wisconsin will become a world leader by: (1) having the most highly skilled professional and technical work force; (2) having the best system of encouraging entrepreneurial ventures; and (3) having a tax, regulatory and financial climate conducive to a healthy statewide economy".

Subdivisions 7. to 11. are a restatement of 5 of the 7 reasons that the JCRAR may use to temporarily suspend an existing rule under s. 227.26 (2) (d), stats. The two reasons not included in the bill are the suspension of a rule based upon: (1) an emergency relating to public health, safety or welfare; or (2) a failure to comply with legislative intent.

1 (b) *Powers.* The task force may do any of the following:

2 1. Based upon its review under paragraph (a), report findings and
3 recommendations that relate to any of the following:

4 a. Amending a rule, a statement of policy or an interpretation of a statute, to
5 the agency that promulgated the rule, statement or interpretation.

6 b. Amending a statute interpreted by a rule, a statement of policy or other
7 interpretation, to the appropriate standing committees of the legislature under
8 section 13.172 (3) of the statutes.

9 c. Promulgating a statement of policy or an interpretation of a statute as a rule,
10 to the joint committee for review of administrative rules.

NOTE: Under s. 227.26 (2) (b), stats., if the JCRAR determines that a statement of policy or an interpretation of a statute meets the definition of a rule, the joint committee for review of administrative rules may direct the agency that issued the statement or interpretation to promulgate it as an emergency rule.

11 2. Conduct public hearings and take testimony regarding a rule, statement of
12 policy or interpretation of a statute.

13 3. Based upon its review under paragraph (a), recommend to the joint
14 committee for review of administrative rules, by a majority vote of a quorum of the
15 task force, that a rule be suspended. The task force may recommend suspension only
16 on the basis of testimony in relation to that rule received at a public hearing and only

1 if the rule does not comply with one or more of the standards specified in paragraph
2 (a) 7. to 11.

3 4. Make recommendations to one or more agencies or the joint committee for
4 review of administrative rules on methods or procedures to improve the process for
5 promulgating new rules and reviewing existing rules.

6 5. Create one or more advisory committees to assist the task force.

7 (4) TASK FORCE REPORT. If the task force recommends that a rule be suspended
8 under subsection (3) (b) 3., the task force shall submit to the joint committee for
9 review of administrative rules with the recommendation a report that contains all
10 of the following:

11 (a) An explanation of the issue regarding the rule and the factual situation out
12 of which the issue arose.

13 (b) Arguments presented for and against the suspension recommendation at
14 the public hearing on the rule.

15 (c) A statement of the action taken by the task force regarding the rule.

16 (d) A statement and analysis of the grounds upon which the task force relied
17 for recommending suspension of the rule.

18 (5) JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES ACTION.

19 (a) *Temporary suspension.*

20 1. If, within 30 days after receiving a recommendation from the task force
21 under subsection (3) (b) 3. that a rule be suspended, the cochairpersons of the joint
22 committee for review of administrative rules do not notify the chairperson of the task
23 force that they have scheduled a meeting of the committee for the purpose of
24 reviewing the recommendation, the committee shall be considered to have

1 suspended the rule on the 31st day after receiving the recommendation from the task
2 force.

3 2. If, within 30 days after receiving a recommendation from the task force
4 under subsection (3) (b) 3. that a rule be suspended, the cochairpersons of the joint
5 committee for review of administrative rules notify the chairperson of the task force
6 that they have scheduled a meeting of the committee for the purpose of reviewing the
7 recommendation, the committee shall not be considered to have suspended the rule
8 under subdivision 1. The committee may, notwithstanding section 227.26 (2) (d) of
9 the statutes, suspend the rule under this subdivision by a majority vote of a quorum
10 of the committee. The committee may suspend a rule under this subdivision only on
11 the basis of testimony in relation to that rule received by the committee at a public
12 hearing and only if it determines that the rule does not comply with one or more of
13 the standards in subsection (3) (a) 7. to 11.

14 (b) *Effect of suspension.* Section 227.26 (2) (e) to (k) of the statutes applies to
15 a rule suspended under paragraph (a) 1. or 2.

NOTE: Section 227.26 (2) (e) to (k) sets forth the process that the legislature uses
to review a temporary rule suspension by the ICRAA.

16 (6) DUTIES OF STATE AGENCIES.

17 (a) *Report.* Each agency shall report to the task force by the first day of the 2nd
18 month after the effective date of this paragraph all of the following information for
19 each chapter in the Wisconsin Administrative Code promulgated by the agency prior
20 to the effective date of this paragraph:

21 1. The subject of the chapter.

1 2. The categories of persons, including small businesses, that are subject to the
2 chapter and an estimate of the number of persons in each category on the effective
3 date of this subdivision.

4 3. The statutory authority for the chapter and statutes interpreted by the
5 chapter.

6 4. Any federal statutes or regulations that relate to the substance of the
7 chapter.

8 5. Whether the chapter has an effect on small businesses and, if it does,
9 whether the agency modified the chapter after considering the methods specified in
10 section 227.114 (2) of the statutes when the agency promulgated or amended the
11 chapter or whether the agency amended the chapter when the agency reviewed the
12 chapter under section 227.114 (7) of the statutes.

NOTE: Section 227.114 (7) directed each agency to review between 1984 and 1989
its rules in effect during that period to consider the methods in s. 227.114(2) for reducing
the impact of the rules on small businesses.

13 6. Any other information requested by the task force.

14 (b) *Assistance*. Each agency shall provide to the task force information
15 requested by the task force to the fullest extent possible.

16 (7) OPERATION.

17 (a) *Organization*. The speaker of the assembly and president of the senate shall
18 jointly convene the first meeting of the task force and supervise the election of the
19 chairperson of the task force. The task force may establish other officers and elect
20 those officers of the task force.

21 (b) *Expenses*. The members of the task force shall be reimbursed from the
22 appropriation under section 20.765 (2) (c) of the statutes, as created by this act, for

1 their actual and necessary expenses incurred in the performance of their duties but
2 shall not receive compensation for their services.

3 (c) *Staff.* The chairperson of the task force shall employ outside the classified
4 service a task force director and such staff as is required for the performance of its
5 duties. The task force may contract for technical assistance.

6 (8) DISSOLUTION. The task force is dissolved on July 1, 2001.

7 **SECTION 9. Nonstatutory provisions; administrative rules task force.**

8 (1) There is authorized for the administrative rules task force, as created by
9 this act, 1.0 FTE GPR director project position and 2.0 FTE GPR project positions for
10 the period ending on July 1, 2001, to be funded from the appropriation under section
11 20.765 (2) (c) of the statutes, as created by this act.

12 **SECTION 10. Effective dates.** This act takes effect on the day after publication,
13 except as follows:

14 (1) The repeal of sections 20.765 (2) (c), 20.923 (6) (aLi) and 230.08 (2) (am) of
15 the statutes takes effect on July 1, 2001.

16 (END)