



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Added To File: 01/08/2004 (Per: RCT)



☞ The 2003 drafting file for LRB 03-3880/P3

(compile draft)

has been transferred to the 2003 drafting file for

LRB 03s0288

☞ The attached 2003 draft was incorporated into the new 2003 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2003 drafting file. The drafting file was then returned, intact, to its folder and filed.

2003 DRAFTING REQUEST

Bill

Received: **12/15/2003**

Received By: **rnelson2**

Wanted: **Soon**

Identical to LRB:

For: **John Gard (608) 266-3387**

By/Representing: **Ellen N**

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

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Administrative Law**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gard@legis.state.wi.us**

Carbon copy (CC:) to: **daryl.hinz@legis.state.wi.us**
laura.rose@legis.state.wi.us
tad.ottman@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Administrative rule making and hearings

Instructions:

See Attached use 3426 as base

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>
/P1	rnelson2 12/15/2003	wjackson 12/16/2003	rschluet 12/16/2003	_____	lemery 12/16/2003		S&L
/P2	rnelson2 01/05/2004	wjackson 01/05/2004	rschluet 01/06/2004	_____	lrb_docadmin 01/06/2004		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		wjackson 01/06/2004		_____			
/P3	rnelson2 01/06/2004	wjackson 01/06/2004	chaugen 01/06/2004	_____	lrb_docadmin 01/06/2004		

FE Sent For:

<END>

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/P2	rnelson2 01/05/2004	wjackson 01/05/2004	rschluet 01/06/2004	_____	lrb_docadmin 01/06/2004		

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

wjackson
01/06/2004

1p3 wj 1/6

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<END>

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p2 1/6 WLj

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6 4 p6
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/P1	rnelson2	/P1 WJ 12/16					

Handwritten notes and signatures:

- Large signature over the 'Proofed' column.
- Handwritten numbers: 12, 16, 3.
- Text: <END>

FE Sent For:

State Capitol, Room 211W
P.O. Box 8953
Madison, WI 53708
Phone: 608-266-3387
Fax: 608-266-5123

**Wisconsin Legislature
Speaker John Gard**

Fax

To: Bob Nelson From: Ellen Nowak
 Fax: 264-6948 Date: 12-15-03
 Phone: - Pages: 3
 Re: _____ CC: _____

- Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Bob:
 Here are the drafting instructions
 for ch. 227.
 The instruction "No change" - means
 no change to AB 655 as drafted.
 Please call or e-mail with
 questions.

Base on - 3926

✓ information support the regulatory approach chosen for the rule any required agency's findings.

SECTION 181 (Draft Rule Record). 227.14 (2) (a) 6. of the statutes is created to read:

✓ 227.14 (2) (a) 6. Any analysis and supporting documentation used ~~when that~~ the agency considered used in support of its determination of the rule's effect on small businesses under s. 227.114 or used when preparing an economic impact report under s. 227.137 (3).

✓ SECTION 182 (Fiscal Estimate). No Change.

✓ SECTION 183-184 (Approval by Governor). No Change

✓ SECTION 185 (Final Rule to Legislature). *No change*

SECTION 186 (Final Rule to Legislature). 227.19 (3) (a) of the statutes is amended to read:

✓ 227.19 (3) (a) A detailed statement explaining the need for basis and purpose of the proposed rule, including how the proposed rule advances relevant statutory goals or purposes.

✓ SECTION 187 (Final Rule to Legislature). Delete.

✓ SECTION 188 (Final Rule to Legislature). No Change.

✓ SECTION 189 (Final Rule to Legislature). No Change.

✓ SECTION 190 (Judicial Review). *No change*

SECTION 191 (Hearing Examiner Assignment). 227.43 (1g) of the statutes is created to read:

✓ 227.43 (1g) The administrator of the division of hearings and appeals shall establish a system for assigning randomly assign hearing examiners to preside over any hearing under this section. The system shall ensure, to the extent practicable, that hearing examiners are assigned to different subjects on a rotating basis. The system may include the establishment of pools of examiner responsible for certain subjects.

✓ ~~SECTION 192 (Hearing Examiner Review). No Change.~~

✓ SECTION 193 (Hearing Examiner Substitution). No Change.

✓ ~~SECTION 194-195 (Hearing Examiner). No Change.~~

✓ SECTION 196 (Constitutional Issues). 227.46 (1) (intro.) of the statutes is amended to read:

✓ 227.46 (1) (intro.) Except as provided under s. 227.43 (1), an agency may designate an official of the agency or an employee on its staff or borrowed from another agency under s. 20.901 or 230.047 as a hearing examiner to preside over any contested case. In hearings under s. 19.52, a reserve judge shall be appointed. A hearing examiner does not have authority to address or make decisions regarding possible constitutional issues whether a statute or administrative rule is constitutional. Subject to rules of the agency, examiners presiding at hearings may:

✓ ~~SECTION 197-203 (Promised Decision). No Change.~~

✓ SECTION 204 (Frivolous Claims). No Change.

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b. Expands the agency record subject to review to include any economic impact report and related analysis that the agency prepares in response to a petition from a group economically affected by the rule, the plain-language analysis of the rule printed at the time the rule is published, and the report submitted to the legislature when the proposed rule is in final draft form.

c. Allows a court to find a rule invalid if the agency's decision-making process related to the adequacy of the factual basis to support the rule was arbitrary and capricious, if the agency's required analysis and determinations were arbitrary and capricious, or if the rule-making process was impaired by a material error in the agency's procedure when promulgating the rule.

d. Requires that if the agency's authority to promulgate a rule requires the rule to be comparable with federal programs or requirements or to exceed federal programs or requirements based on need, the court shall conduct a review of the agency record to determine if the agency determination was supported by substantial evidence.

2. Requires an agency to prepare an economic impact report for a proposed rule if a municipality, an association that represents a farm, labor, business, or professional group, or five or more persons, who may be economically affected by a proposed rule asks the agency to prepare that report.

3. Requires the Department of Administration (DOA) to review a proposed rule if petitioned by affected persons or if an economic impact report is prepared and to determine if the agency has statutory authority to promulgate the proposed rule, if the rule is consistent with and not duplicative of other rules or federal regulations, that the proposed rule is consistent with the governor's positions, and that the agency used complete and accurate data when developing the rule. Under the bill, DOA may return the proposed rule to the agency for rewriting.

4. Requires an agency, when preparing the analysis of a proposed rule as required under current law, to include all of the following in that analysis, in addition to the currently required summary of the rule and references to the statutes that authorize the rule and that the rule interprets:

- a. ~~A summary of the legal interpretations and policy considerations underlying the rule.~~ *An explanation of the agency's authority to promulgate*
- b. ~~A summary of existing federal regulatory programs that address similar matters.~~ *and preliminary comparison with regulations*
- c. ~~A summary of the data, studies, and other sources of information on which the proposed rule is based.~~ *comparison of similar rules in adjacent states*
- d. ~~A summary of the methodology used to obtain and analyze the data and how the data supports the regulatory approach and the agency's findings.~~

5. Requires the agency to submit a proposed rule in final form to the governor for review, modification, or rejection.

6. Requires the administrator of the division of hearings and appeals to randomly assign hearing examiners to preside over administrative hearings.

7. Allows a person to request the substitution of an administrative hearing examiner and provides a procedure for that substitution.

*Insert
and 1.*

*Establish
a system
for assigning*

*that results in the
hearing examiners hearing different
subjects on a rotating
basis*

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addressing whether a law or rule is

8. Prohibits a hearing examiner from ~~making any decision regarding~~ constitutional ~~issues~~.

9. Removes the provision that allowed certain agencies to have the hearing examiner make a proposed decision and have designated officials of the agency review that proposed decision and issue a final decision. Instead, the hearing examiner's decision is final.

10. Allows a hearing examiner to award the successful party his or her costs, including attorney fees, if the hearing examiner finds that the other party's claim or defense is frivolous.

11. Allows the venue of judicial review of a contested case where the petitioner is a nonresident to be in the county where the property involved is located or if no property involved, in the county where the dispute arose, instead of in Dane County as is current law.

For further information see the *state and local* 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.** 19.52 (3) of the statutes is amended to read:

2 19.52 (3) Chapters 901 to 911 apply to the admission of evidence at the hearing.

3 The ~~board~~ hearing examiner shall not find a violation of this subchapter or subch.
4 III of ch. 13 except upon clear and convincing evidence admitted at the hearing.

5 **SECTION 2.** 19.52 (4) of the statutes is repealed.

6 **SECTION 3.** 30.02 (3) of the statutes is amended to read:

7 30.02 (3) Upon receipt of a complete permit application or a request for a
8 determination under s. 236.16 (3) (d), the department shall either schedule a public
9 hearing to be held within 60 days after receipt of the application or request or provide
10 notice stating that it will proceed on the application or request without a public
11 hearing if, within 30 days after the publication of the notice, no substantive written
12 objection to issuance of the permit is received or no request for a hearing concerning
13 the determination under s. 236.16 (3) (d) is received from a person who may be
14 aggrieved by issuance of the permit or determination. The notice shall be provided

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1 to the clerk of each municipality in which the project is located and to any other
 2 person required by law to receive notice. The department may provide notice to other
 3 persons ~~as it deems appropriate who may be aggrieved by the issuance of the permit~~
 4 ~~or determination.~~ The department shall provide a copy of the notice to the applicant,
 5 who shall publish it as a class 1 notice under ch. 985 in a newspaper designated by
 6 the department that is likely to give notice in the area affected. The applicant shall
 7 file proof of publication with the department.

8 **SECTION 4.** 196.24 (3) of the statutes is amended to read:

9 196.24 (3) The commission may conduct any number of investigations
 10 contemporaneously through different agents, and may delegate to any agent the
 11 authority to take testimony bearing upon any investigation or at any hearing. The
 12 decision of the commission shall comply with s. 227.46 and shall be based upon its
 13 records and upon the evidence before it, except that, ~~notwithstanding s. 227.46 (4),~~
 14 a decision maker may hear a case or read or review the record of a case if the record
 15 includes a synopsis or summary of the testimony and other evidence presented at the
 16 hearing that is prepared by the commission staff. Parties shall have an opportunity
 17 to demonstrate to a decision maker that a synopsis or summary prepared under this
 18 subsection is not sufficiently complete or accurate to fairly reflect the relevant and
 19 material testimony or other evidence presented at a hearing.

20 LPS: SECTION 5. 227.135 (1) ^f ~~(e) and (f)~~ ^{is a} of the statutes ~~are~~ created to read:
 21 Please Fix comp. → 227.135 (1) ^f ~~(e)~~ A summary of any existing or ^{and preliminary comparison} ~~anticipated~~ federal ^{proposed} ~~program~~ that ^{regulation}
 22 is intended to address the activities to be regulated by the rule ~~and an analysis of the~~
 23 ~~need for the rule if a federal program exists.~~

24 (f) An assessment of whether the rule is inconsistent, duplicative, or more
 25 stringent than the regulations under any federal program summarized in par. (e).

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1 **SECTION 6.** 227.137 of the statutes is created to read:

2 **227.137 Economic impact reports of guidelines, policies, and rules. (1)**

3 After an agency publishes a statement of the scope of a proposed rule under s.
4 227.135, and before the agency submits the proposed rule to the legislative council
5 for review under s. 227.15, a municipality, an association that represents a farm,
6 labor, business, or professional group, or 5 or more persons having an interest in the
7 proposed rule may petition the agency to prepare an economic impact report of the
8 proposed rule. If the agency determines that the petitioner may be economically
9 affected by the proposed rule, the agency shall prepare an economic impact report
10 before submitting the proposed rule to the legislative council under s. 227.15.

11 **(2)** A municipality, an association that represents a farm, labor, business, or
12 professional group, or 5 or more persons affected by an existing or proposed agency
13 guideline or policy, including agency comments and policies in response to federal
14 regulations, may petition the agency to prepare an economic impact report for that
15 existing or proposed agency guideline or policy. If the agency determines that the
16 petitioner may be economically affected by the proposed or existing guideline or
17 policy, the agency shall prepare an economic impact report.

18 **(3)** An economic impact report shall contain information on the effect of the
19 proposed rule or existing or proposed guideline or policy on specific businesses,
20 business sectors, and the state's economy. When preparing the report, the agency

21 shall solicit information and advice from the department of commerce, and

22 from governmental units, associations, businesses, and individuals that may be affected

23 by the proposed rule or existing or proposed guideline or policy. The agency may

24 request information that is reasonably necessary for the preparation of an economic

25 impact report from other state agencies, governmental units, associations,

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1 businesses, and individuals, but no one is required to respond to that request. The
2 economic impact report shall include all of the following:

3 (a) An analysis and quantification of the problem, including any risks to public
4 health or the environment, that the guideline, policy, or rule is intending to address.

5 (b) An analysis and quantification of the economic impact of the guideline,
6 policy, or rule, including direct, indirect, and consequential costs reasonably
7 expected to be incurred by the state, governmental units, associations, businesses,
8 and affected individuals.

9 (c) An analysis of the guideline's, policy's, or rule's impact on the state's
10 economy, including how the guideline, policy, or rule affects the state's economic
11 development policies.

12 (d) An analysis of benefits of the guideline, policy, or rule, including how the
13 guideline, policy, or rule reduces the risks and addresses the problems that the
14 guideline, policy, or rule is intended to address.

15 (e) An analysis that compares the benefits to the costs of the guideline, policy,
16 or rule.

17 (f) An analysis of existing or anticipated federal programs that are intended to
18 address the risks and problems the agency is intending to address with the guideline,
19 policy, or rule, including a determination of whether the guideline, policy, or rule and
20 related administrative requirements are consistent with and not duplicative of those
21 existing or anticipated federal programs.

22 (g) An analysis of regulatory alternatives to the guideline, policy, or rule,
23 including the alternative of no regulation, and a determination of whether the
24 guideline, policy, or rule addresses the identified risks and problems the agency is
25 intending to address in the most cost-efficient manner.

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1 (h) A comparison of the costs of the guideline, policy, or rule borne by Wisconsin
2 businesses to costs borne by similar businesses located in Indiana, Missouri, and
3 adjacent states.

4 (4) The agency shall submit the economic impact report to the legislative
5 council staff, to the department of administration, and to the petitioner.

6 (5) This section does not apply to emergency rules promulgated under s.
7 227.24.

8 **SECTION 7.** 227.138 of the statutes is created to read:

9 **227.138 Department of administration review of proposed rules.** (1)

10 In this section:

11 (a) “Department” means the department of administration.

12 (b) “Economic impact report” means a report prepared under s. 227.137.

13 (c) “Guideline or policy” includes any agency comments or policies in response
14 to federal regulations.

15 (2) If the department receives an economic impact report under s. 227.137 (4)
16 regarding a proposed rule, the department shall review the proposed rule and issue
17 a report. A municipality, an association that represents a farm, labor, business, or
18 professional group, or 5 or more persons having an interest in a proposed rule may
19 petition the department to review the proposed rule. If the department determines
20 that the petitioner may be economically affected by the proposed rule, the
21 department shall review the proposed rule and issue a report. The department shall
22 notify the agency that a report will be prepared and that the agency shall not submit
23 a proposed rule to the legislative council for review under s. 227.15 (1) until the
24 agency receives a copy of the department’s report. The report shall include all of the
25 following findings:

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1 (a) If an economic impact report was prepared as required under s. 227.137 (1),
2 that the report and the analysis required under s. 227.137 (3) are supported by
3 related documentation contained in the economic impact report.

4 (b) That the agency has clear statutory authority to promulgate the proposed
5 rule.

6 (c) That the proposed rule, including any administrative requirements, is
7 consistent with and not duplicative of other state rules or federal regulations.

8 (d) That the proposed rule is consistent with the governor's positions and
9 priorities, including those related to economic development.

10 (e) That the agency used data, studies, and other sources of information in
11 developing the proposed rule that is complete, accurate, and derived from accepted
12 scientific methodologies.

13 (3) Before issuing a report under sub. (2), the department may return a
14 proposed rule to the agency for further consideration and revision with a written
15 explanation of why the proposed rule is returned. If the agency head disagrees with
16 the department's reasons for returning the proposed rule, the agency head shall so
17 notify the department in writing. The department secretary shall approve the
18 proposed rule when the agency has adequately addressed the issues raised during
19 the department's review of the rule. The department shall submit a statement to the
20 governor indicating the department's approval of the proposed rule, the
21 correspondence between the agency and the department related to the proposed rule,
22 and a copy of its report regarding the proposed rule.

23 (4) If the department receives an economic impact report under s. 227.137 (4)
24 regarding a proposed or existing guideline or policy, the department shall review the
25 guideline or policy and issue a report. A municipality, an association that represents

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1 a farm, labor, business, or professional group, or 5 or more persons having an interest
2 in a proposed or existing guideline or policy may petition the department to review
3 the guideline or policy. If the department determines that the petitioner may be
4 economically affected by the guideline or policy, the department shall review the
5 guideline or policy and issue a report. The department shall notify the agency that
6 a report will be prepared. The report shall include findings consistent with those
7 under sub. (2) and include the following findings:

8 (a) If an economic impact report was prepared as required under s. 227.137 (4),
9 that the report and the analysis required under s. 227.137 (3) are supported by
10 related documentation contained in the economic impact report.

11 (b) That the guideline or policy is consistent with and does not exceed the
12 agency's statutory authority.

13 (c) That the guideline or policy is consistent with the governor's positions and
14 priorities, including those related to economic development.

15 (d) That the guideline or policy is of the type that is not required to be
16 promulgated as a rule.

17 (5) Before issuing a report under sub. (4), the department may prohibit an
18 agency from implementing a proposed guideline or policy until the department
19 secretary determines that the proposed guideline or policy meets the criteria under
20 sub. (4) (a) to (d).

21 **SECTION 8.** 227.14 (2) (a) of the statutes is amended to read:

22 227.14 (2) (a) An agency shall prepare in plain language an analysis of each
23 proposed rule, which shall be printed with the proposed rule when it is published or
24 distributed. The analysis shall include ~~a~~ all of the following:

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1. A reference to each statute that the proposed rule interprets, each statute that authorizes its promulgation, each related statute or related rule and a

2. A brief summary of the proposed rule.

SECTION 9. 227.14 (2) (a) 3. of the statutes is created to read:

227.14 (2) (a) 3. A summary of the relevant legal interpretations and policy considerations underlying the proposed rule.

SECTION 10. 227.14 (2) (a) 4. of the statutes is created to read:

227.14 (2) (a) 4. A summary of existing and anticipated federal regulatory programs intended to address similar matters.

SECTION 11. 227.14 (2) (a) 5. of the statutes is created to read:

227.14 (2) (a) 5. A summary of the factual data, studies, and other sources of information on which the proposed rule is based, the methodology used to obtain and analyze the data, studies, and other sources of information, how the data, studies, and other sources of information support the regulatory approach chosen for the rule and how the data, studies, and other sources of information support any required agency's findings.

SECTION 12. 227.14 (2) (a) 6. of the statutes is created to read:

227.14 (2) (a) 6. Any analysis and supporting documentation used when the agency considered the rule's effect on small businesses under s. 227.114 or used when preparing an economic impact report under s. 227.137 (3).

SECTION 13. 227.14 (4) (b) 3. of the statutes is created to read:

227.14 (4) (b) 3. 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.

SECTION 14. 227.185 of the statutes is created to read:

Insert (2) 10-2

Insert 10-16

(18)
(19)

that
used when
the agency prepared
that was

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1 **227.185 Approval by governor.** After a proposed rule is in final draft form
2 and approved by the department of administration ^{if required} under s. 227.138 (3), the agency
3 shall submit the rule to the governor. The governor may approve, modify, or reject
4 the proposed rule. If the governor approves a proposed rule, the governor shall
5 provide the agency with a written notice of that approval. No proposed rule may be
6 submitted to the legislature for review under s. 227.19 (2) or filed with the office of
7 secretary of state or revisor unless the governor has approved ^{or modified and approved} the proposed rule in
8 writing. This section does not apply to emergency rules promulgated under s. 227.24.

9 **SECTION 15.** 227.19 (2) of the statutes is amended to read:

10 **227.19 (2) NOTIFICATION OF LEGISLATURE.** An agency shall submit a notice to the
11 presiding officer of each house of the legislature when a proposed rule is in final draft
12 form and approved by the governor. The notice shall be submitted in triplicate and
13 shall be accompanied by a report in the form specified under sub. (3). A notice
14 received under this subsection on or after September 1 of an even-numbered year
15 shall be considered received on the first day of the next regular session of the
16 legislature. Each presiding officer shall, within 7 working days following the day on
17 which the notice and report are received, refer them to one committee, which may
18 be either a standing committee or a joint legislative committee created by law, except
19 the joint committee for review of administrative rules. The agency shall submit to
20 the revisor for publication in the register a statement that a proposed rule has been
21 submitted to the presiding officer of each house of the legislature. Each presiding
22 officer shall enter a similar statement in the journal of his or her house.

23 **SECTION 16.** 227.19 (3) (intro.) of the statutes is amended to read:

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

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1 the material specified in s. 227.14 (2) to (4), a copy of any economic impact report
2 prepared by the agency under s. 227.137, a copy of the report prepared by the
3 department of administration under s. 227.138, a copy of the written approval of the
4 governor under s. 227.185, a copy of any recommendations of the legislative council
5 staff, and an analysis. The analysis shall include:

6 **SECTION 17.** 227.19 (3) (a) of the statutes is amended to read:

7 227.19 (3) (a) A detailed statement explaining the need for basis and purpose
8 of the proposed rule, including how the proposed rule advances relevant statutory
9 goals or purposes.

10 **SECTION 18.** 227.19 (3) (am) of the statutes is created to read:

11 227.19 (3) (am) An analysis of policy alternatives to the proposed rule,
12 including reliance on federal regulatory programs, and an explanation for the
13 rejection of those alternatives.

14 **SECTION 19.** 227.19 (3) (b) of the statutes is amended to read:

15 227.19 (3) (b) ~~An~~ A summary of public comments to the proposed rule and the
16 agency's response to those comments, and an explanation of any modification made
17 in the proposed rule as a result of public comments or testimony received at a public
18 hearing.

19 **SECTION 20.** 227.19 (3) (cm) of the statutes is created to read:

20 227.19 (3) (cm) Any changes to the analysis prepared under s. 227.14 (2) or the
21 fiscal estimate prepared under s. 227.14 (4).

22 **SECTION 21.** 227.40 (4m) of the statutes is created to read:

23 227.40 (4m) (a) In any proceeding under this section for judicial review of a
24 rule, the court shall conduct the review without a jury. The review shall be confined
25 to a substantial inquiry of the agency record, as necessarily and appropriately

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1 supplemented by evidence presented to the court. The agency record includes the
2 economic impact report and documentation required under s. 227.137 (3), the
3 analysis and documentation required under ss. 227.14 (2) and 227.19 (3), and public
4 comments on the rule.

5 (b) The court shall treat separately disputed issues of agency procedure,
6 interpretations of law, and determinations of fact or policy within the agency's
7 exercise of delegated discretion.

8 (c) When reviewing whether a rule is invalid as promulgated for failure to
9 comply with statutory rule-making procedures under this chapter, the court shall
10 determine the adequacy of the factual basis to support the rule and the related
11 reasoning employed by the agency to reach its conclusions. When determining the
12 adequacy of the factual basis to support the rule, the court shall consider relevant
13 comments on and alternatives to the rule's approach offered by affected parties
14 during the rule-making process. Based on this review, the court shall find the rule
15 invalid if the agency's decision-making process was arbitrary and capricious.

16 (d) The court shall find a rule invalid if it determines that the adequacy of the
17 rule-making process or that the validity of the regulatory approach was impaired by
18 a material error in agency procedure or a failure of the agency to follow prescribed
19 procedure.

20 (e) When an agency's statutory authority to promulgate a rule is predicated on
21 the rule being comparable to relevant federal programs or standards, including
22 requirements that the rule be similar to, consistent with, or no more restrictive than
23 federal programs or standards, the court shall conduct a de novo review of the agency
24 record to determine if the agency determination that the rule was comparable to the
25 federal program or standards was supported by substantial evidence.

BILL**SECTION 21**

1 (f) When an agency's statutory authority to promulgate a rule exceeding
 2 relevant federal programs or standards is predicated on the agency making a finding
 3 of need, including a need to protect human health or the environment, the court shall
 4 review the agency's record to determine if the agency's findings were supported by
 5 substantial evidence.

6 (g) If a court finds that the agency's analysis and determinations under s.
 7 227.137 (3) are arbitrary and capricious, the court shall find the rule invalid as
 8 without compliance with statutory rule-making procedures set forth in this chapter.

9 **SECTION 22.** 227.43 (1g) of the statutes is created to read:

10 227.43 (1g) The administrator of the division of hearings and appeals shall

11 *establish a system for assigning*
 (1) ~~randomly assign~~ hearing examiners to preside over any hearing under this section. *insert 14-11*

12 **SECTION 23.** 227.44 (2) (d) of the statutes is created to read:

13 227.44 (2) (d) The name and title of the person who will conduct the hearing.

14 **SECTION 24.** 227.445 of the statutes is created to read:

15 **227.445 Substitution of hearing examiner.** (1) A person requesting a
 16 hearing before a hearing examiner may file a written request for a substitution of a
 17 new hearing examiner for the hearing examiner assigned to the matter. The written
 18 request shall be filed not later than 10 days after receipt of the notice under s. 227.44.

19 (2) No person may file more than one such written request in any one hearing.

20 (3) Upon receipt of the written request, the original hearing examiner shall
 21 have no further jurisdiction in the matter except to determine if the request was
 22 made timely and in proper form. If the hearing examiner fails to make a
 23 determination as to allowing the substitution within 7 days, the hearing examiner
 24 shall refer the matter to the administrator of the division of hearings and appeals for
 25 the determination and reassignment of the hearing as necessary. If the written

BILL

1 request is determined to be proper, the matter shall be transferred to another
2 hearing examiner. Upon transfer, the hearing examiner shall transmit to the new
3 hearing examiner all the papers in the matter.

4 **SECTION 25.** 227.45 (7) (intro.) of the statutes is renumbered 227.45 (7) and
5 amended to read:

6 227.45 (7) In any class 2 proceeding, each party shall have the right, prior to
7 the date set for hearing, to take and preserve evidence as provided in ch. 804. Upon
8 motion by a party or by the person from whom discovery is sought in any class 2
9 proceeding, and for good cause shown, the hearing examiner may make any order in
10 accordance with s. 804.01 which justice requires to protect a party or person from
11 annoyance, embarrassment, oppression, or undue burden or expense. ~~In any class
12 1 or class 3 proceeding, an agency may by rule permit the taking and preservation
13 of evidence, but in every such proceeding the taking and preservation of evidence
14 shall be permitted with respect to a witness:~~

15 **SECTION 26.** 227.45 (7) (a) to (d) of the statutes are repealed.

16 **SECTION 27.** 227.46 (1) (intro.) of the statutes is amended to read:

17 227.46 (1) (intro.) Except as provided under s. 227.43 (1), an agency may
18 designate an official of the agency or an employee on its staff or borrowed from
19 another agency under s. 20.901 or 230.047 as a hearing examiner to preside over any
20 contested case. In hearings under s. 19.52, a reserve judge shall be appointed. A
21 hearing examiner does not have authority to address or make decisions regarding
22 whether a statute or administrative rule is constitutional
23 possible constitutional issues. Subject to rules of the agency, examiners presiding at
24 hearings may:

24 **SECTION 28.** 227.46 (1) (h) of the statutes is amended to read:

BILL

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

3 **SECTION 29.** 227.46 (2) of the statutes is repealed.

4 **SECTION 30.** 227.46 (2m) of the statutes is repealed.

5 **SECTION 31.** 227.46 (3) of the statutes is repealed.

6 **SECTION 32.** 227.46 (4) of the statutes is repealed.

7 **SECTION 33.** 227.46 (6) of the statutes is amended to read:

8 227.46 (6) The functions of persons presiding at a hearing or participating in
9 ~~proposed or~~ final decisions shall be performed in an impartial manner. A hearing
10 examiner or agency official may at any time disqualify himself or herself. In class
11 2 and 3 proceedings, on the filing in good faith of a timely and sufficient affidavit of
12 personal bias or other disqualification of a hearing examiner or official, the agency
13 or hearing examiner shall determine the matter as part of the record and decision
14 in the case.

15 **SECTION 34.** 227.47 (1) of the statutes is amended to read:

16 227.47 (1) Except as provided in sub. (2), every ~~proposed or~~ final decision of an
17 agency or hearing examiner following a hearing and every final decision of an agency
18 shall be in writing accompanied by findings of fact and conclusions of law. The
19 findings of fact shall consist of a concise and separate statement of the ultimate
20 conclusions upon each material issue of fact without recital of evidence. Every
21 ~~proposed or~~ final decision shall include a list of the names and addresses of all
22 persons who appeared before the agency in the proceeding who are considered
23 parties for purposes of review under s. 227.53. The agency shall by rule establish a
24 procedure for determination of parties.

25 **SECTION 35.** 227.483 of the statutes is created to read:

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1 **227.483 Costs upon frivolous claims.** (1) If a hearing examiner finds, at
2 any time during the proceeding, that an administrative hearing commenced or
3 continued by a petitioner or a claim or defense used by a party is frivolous, the
4 hearing examiner shall award the successful party his or her costs, as determined
5 under s. 814.04, and reasonable attorney fees.

6 (2) If the costs and fees awarded under sub. (1) are awarded against the party
7 other than a public agency, those costs may be assessed fully against either the party
8 or the attorney representing the party or may be assessed so that the party and the
9 attorney each pay a portion of the costs and fees.

10 (3) To find a petition for a hearing or a claim or defense to be frivolous under
11 sub. (1), the hearing examiner must find at least one of the following:

12 (a) That the petition, claim, or defense was commenced, used, or continued in
13 bad faith, solely for purposes of harassing or maliciously injuring another.

14 (b) That the party or the party's attorney knew, or should have known, that the
15 petition, claim, or defense was without any reasonable basis in law or equity and
16 could not be supported by a good faith argument for an extension, modification, or
17 reversal of existing law.

18 **SECTION 36.** 227.485 (5) of the statutes is amended to read:

19 227.485 (5) If the hearing examiner awards costs under sub. (3), he or she shall
20 determine the costs under this subsection, except as modified under sub. (4). The
21 decision on the merits of the case shall be placed in a ~~proposed~~ decision and
22 submitted under ss. 227.47 and 227.48. The prevailing party shall submit, within
23 30 days after service of the ~~proposed~~ decision, to the hearing examiner and to the
24 state agency which is the losing party an itemized application for fees and other
25 expenses, including an itemized statement from any attorney or expert witness

BILL

1 representing or appearing on behalf of the party stating the actual time expended
2 and the rate at which fees and other expenses were computed. The state agency
3 which is the losing party has 15 working days from the date of receipt of the
4 application to respond in writing to the hearing examiner. The hearing examiner
5 shall determine the amount of costs using the criteria specified in s. 814.245 (5) and
6 include an order for payment of costs in the final decision.

7 **SECTION 37.** 227.53 (1) (a) 3. of the statutes is amended to read:

8 227.53 (1) (a) 3. If the petitioner is a resident, the proceedings shall be held in
9 the circuit court for the county where the petitioner resides, except that if the
10 petitioner is an agency, the proceedings shall be in the circuit court for the county
11 where the respondent resides and except as provided in ss. 73.0301 (2) (b) 2., 77.59
12 (6) (b), 182.70 (6), and 182.71 (5) (g). ~~The proceedings shall be in the circuit court for~~
13 ~~Dane County if~~ If the petitioner is a nonresident, the proceedings shall be held in the
14 county where the property affected by the decision is located or, if no property is
15 affected, in the county where the dispute arose. If all parties stipulate and the court
16 to which the parties desire to transfer the proceedings agrees, the proceedings may
17 be held in the county designated by the parties. If 2 or more petitions for review of
18 the same decision are filed in different counties, the circuit judge for the county in
19 which a petition for review of the decision was first filed shall determine the venue
20 for judicial review of the decision, and shall order transfer or consolidation where
21 appropriate.

22 **SECTION 38.** 227.57 (11) of the statutes is created to read:

23 227.57 (11) If the decision of the hearing examiner is inconsistent with the
24 position taken at the hearing by the agency, the court shall give no deference to the
25 examiner's decision when conducting its review.

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1 **SECTION 39.** 289.27 (5) of the statutes is amended to read:

2 289.27 (5) DETERMINATION OF NEED; DECISION BY HEARING EXAMINER. If a
3 contested case hearing is conducted under this section, the secretary shall issue any
4 decision concerning determination of need, ~~notwithstanding s. 227.46 (2) to (4).~~ The
5 secretary shall direct the hearing examiner to certify the record of the contested case
6 hearing to him or her without an intervening proposed decision. The secretary may
7 assign responsibility for reviewing this record and making recommendations
8 concerning the decision to any employee of the department.

9 **SECTION 40.** 448.02 (3) (b) of the statutes is amended to read:

10 448.02 (3) (b) After an investigation, if the board finds that there is probable
11 cause to believe that the person is guilty of unprofessional conduct or negligence in
12 treatment, the board shall hold a hearing on such conduct. The board may use any
13 information obtained by the board or the department under s. 655.17 (7) (b), as
14 created by 1985 Wisconsin Act 29, in an investigation or a disciplinary proceeding,
15 including a public disciplinary proceeding, conducted under this subsection and the
16 board may require a person holding a license, certificate or limited permit to undergo
17 and may consider the results of one or more physical, mental or professional
18 competency examinations if the board believes that the results of any such
19 examinations may be useful to the board in conducting its hearing. A unanimous
20 finding by a panel established under s. 655.02, 1983 stats., or a finding by a court that
21 a physician has acted negligently in treating a patient is conclusive evidence that the
22 physician is guilty of negligence in treatment. A finding that is not a unanimous
23 finding by a panel established under s. 655.02, 1983 stats., that a physician has acted
24 negligently in treating a patient is presumptive evidence that the physician is guilty
25 of negligence in treatment. A certified copy of the findings of fact, conclusions of law

BILL

1 and order of the panel or the order of a court is presumptive evidence that the finding
2 of negligence in treatment was made. The board shall render a decision within 90
3 days after the date on which the hearing is held ~~or, if subsequent proceedings are~~
4 ~~conducted under s. 227.46 (2), within 90 days after the date on which those~~
5 ~~proceedings are completed.~~

6 **SECTION 41.** 448.675 (1) (b) of the statutes is amended to read:

7 448.675 (1) (b) After an investigation, if the affiliated credentialing board finds
8 that there is probable cause to believe that the person is guilty of unprofessional
9 conduct or negligence in treatment, the affiliated credentialing board shall hold a
10 hearing on such conduct. The affiliated credentialing board may require a licensee
11 to undergo and may consider the results of a physical, mental or professional
12 competency examination if the affiliated credentialing board believes that the
13 results of the examination may be useful to the affiliated credentialing board in
14 conducting its hearing. A finding by a court that a podiatrist has acted negligently
15 in treating a patient is conclusive evidence that the podiatrist is guilty of negligence
16 in treatment. A certified copy of the order of a court is presumptive evidence that the
17 finding of negligence in treatment was made. The affiliated credentialing board
18 shall render a decision within 90 days after the date on which the hearing is held ~~or,~~
19 ~~if subsequent proceedings are conducted under s. 227.46 (2), within 90 days after the~~
20 ~~date on which those proceedings are completed.~~

21 (END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3880/P1ins
RPN:.....

insert anl 1

- a. An explanation of the agency's authority to promulgate the proposed rule.
- b. A summary of and a comparison with existing federal regulations that address the activities addressed by the proposed rule.
- c. A comparison of similar rules in adjacent states.
- d. A summary of the data and methodologies used in support of the proposed rules and how related findings support the regulatory approach chosen for the proposed rule.
- e. Any analysis and documentation used to support the agency's determination of the proposed rule on small businesses and used when preparing the economic impact report.

Inserts
10-2

2. Requires the administrator of the division of hearings and appeals to create a pool of hearing examiners to preside over administrative hearings from the departments of natural resources and transportation.

3. Prohibits a hearing examiner from making any decision regarding constitutional issues.

4. Allows a hearing examiner to award the successful party his or her costs, including attorney fees, if the hearing examiner finds that the other party's claim or defense is frivolous.

5. Adds to the report that is submitted to the legislature when the bill is in final draft form:

a. A detailed statement explaining the basis and purpose of the proposed rule, including how the proposed rule advances relevant statutory goals or purposes.

b. A summary of public comments to the proposed rule and the agency's response to those comments.

c. Any changes to the analysis prepared under s. 227.14 (2) or to the fiscal estimate prepared under s. 227.14 (4).

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 227.135 (1) (f) of the statutes is created to read:

2 227.135 (1) (f) A summary of and preliminary comparison with any existing or
3 proposed federal regulation that is intended to address the activities to be regulated
4 by the rule.

5 **SECTION 2.** 227.14 (2) (a) of the statutes is amended to read:

6 227.14 (2) (a) An agency shall prepare in plain language an analysis of each
7 proposed rule, which shall be printed with the proposed rule when it is published or
8 distributed. The analysis shall include ~~a~~ all of the following:

9 1. A reference to each statute that the proposed rule interprets, each statute
10 that authorizes its promulgation, each related statute or related rule, and ~~a~~ an
11 explanation of the agency's authority to promulgate the proposed rule under those
12 statutes.

Insert
10-2

- 3 -
Inserts 10-16

1 2. A brief summary of the proposed rule, including the basis and purpose of the
2 proposed rule.

3 ~~SECTION 4~~ [#] 227.14 (2) (a) 3. of the statutes is created to read:

4 227.14 (2) (a) 3. A summary of and preliminary comparison with any existing
5 or proposed federal regulation that is intended to address the activities to be
6 regulated by the proposed rule.

7 ~~SECTION 4~~ [#] 227.14 (2) (a) 4. of the statutes is created to read:

8 227.14 (2) (a) 4. A comparison of similar rules in adjacent states.

9 ~~SECTION 5~~ [#] 227.14 (2) (a) 5. of the statutes is created to read:

10 227.14 (2) (a) 5. A summary of the factual data and analytical methodologies
11 that the agency used in support of the proposed rule and how any related findings
12 support the regulatory approach chosen for the proposed rule.

13 **SECTION 6.** 227.14 (2) (a) 6. of the statutes is created to read:

14 227.14 (2) (a) 6. Any analysis and supporting documentation that the agency
15 used in support of its determination of the proposed rule's effect on small businesses
16 under s. 227.114.

17 **SECTION 7.** 227.14 (4) (b) 3. of the statutes is created to read:

18 227.14 (4) (b) 3. For a proposed rule that the agency determines may have a
19 significant effect on the private sector, the anticipated costs that will be incurred by
20 the private sector in complying with the proposed rule.

21 **SECTION 8.** 227.19 (3) (a) of the statutes is amended to read:

22 227.19 (3) (a) A detailed statement explaining the need for basis and purpose
23 of the proposed rule, including how the proposed rule advances relevant statutory
24 goals or purposes.

25 **SECTION 9.** 227.19 (3) (b) of the statutes is amended to read:

*Insert
10-16*

Insert 14-11

✓ information support the regulatory approach chosen for the rule any required agency's findings.

SECTION 181 (Draft Rule Record). 227.14 (2) (a) 6. of the statutes is created to read:

✓ 227.14 (2) (a) 6. Any analysis and supporting documentation used ~~when that~~ the agency considered used in support of its determination of the rule's effect on small businesses under s. 227.114 or used when preparing an economic impact report under s. 227.137 (3).

✓ SECTION 182 (Fiscal Estimate). No Change.

✓ SECTION 183-184 (Approval by Governor). No Change

✓ SECTION 185 (Final Rule to Legislature). *No change*

SECTION 186 (Final Rule to Legislature). 227.19 (3) (a) of the statutes is amended to read:

✓ 227.19 (3) (a) A detailed statement explaining the need for basis and purpose of the proposed rule, including how the proposed rule advances relevant statutory goals or purposes.

✓ SECTION 187 (Final Rule to Legislature). Delete.

✓ SECTION 188 (Final Rule to Legislature). No Change.

✓ SECTION 189 (Final Rule to Legislature). No Change.

✓ SECTION 190 (Judicial Review). *No change*

SECTION 191 (Hearing Examiner Assignment). 227.43 (1g) of the statutes is created to read:

✓ 227.43 (1g) The administrator of the division of hearings and appeals shall establish a system for assigning randomly assign hearing examiners to preside over any hearing under this section. The system shall ensure, to the extent practicable, that hearing examiners are assigned to different subjects on a rotating basis. The system may include the establishment of pools of examiners responsible for certain subjects.

✓ SECTION 192 (Hearing Examiner Review). ~~No Change~~

SECTION 193 (Hearing Examiner Substitution). No Change.

✓ SECTION 194-195 (Hearing Fees). ~~No Change~~

SECTION 196 (Constitutional Issues). 227.46 (1) (intro.) of the statutes is amended to read:

227.46 (1) (intro.) Except as provided under s. 227.43 (1), an agency may designate an official of the agency or an employee on its staff or borrowed from another agency under s. 20.901 or 230.047 as a hearing examiner to preside over any contested case. In hearings under s. 19.52, a reserve judge shall be appointed. A hearing examiner does not have authority to address or make decisions regarding possible constitutional issues whether a statute or administrative rule is constitutional. Subject to rules of the agency, examiners presiding at hearings may:

✓ SECTION 197-203 (Proposed Decision). ~~No Change~~

SECTION 204 (Frivolous Claims). No Change.

no underscoring

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3880/P1dn
RPN:.....

Please review this draft carefully to ensure that it is consistent with your intent.

I did not receive any instructions about Sections 206 and 207 of AB655, so I left those sections in this draft. OK?

Do you want me to add an initial applicability section to this draft?

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3880/P1dn
RPN:wlj:rs

December 16, 2003

Please review this draft carefully to ensure that it is consistent with your intent.

I did not receive any instructions about Sections 206 and 207 of AB655, so I left those sections in this draft. OK?

Do you want me to add an initial applicability section to this draft?

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

Nelson, Robert P.

From: Nowak, Ellen
Sent: Monday, January 05, 2004 12:39 PM
To: Nelson, Robert P.
Subject: LRB 3931/1

Hi Bob:

The last set of drafting instructions that I sent to you stated that Sec. 35 (Venue) should be deleted. That is incorrect - the section should stay in.

Thanks, Ellen.

Nelson, Robert P.

To: Nowak, Ellen
Subject: RE: LRB 3931/1

You had the right number, I did not. Thanks for seeing that before I got too far.

-----Original Message-----

From: Nowak, Ellen
Sent: Monday, January 05, 2004 1:16 PM
To: Nelson, Robert P.
Subject: RE: LRB 3931/1

Bob:

Sorry - referenced the wrong bill draft # (I have too many!) - all of the changes that I sent to you relate to LRB 3880/P1.

-----Original Message-----

From: Nelson, Robert P.
Sent: Monday, January 05, 2004 1:04 PM
To: Nowak, Ellen
Subject: RE: LRB 3931/1

Thanks. I am working on the draft now and have one question. The first line of the instructions says delete SECTIONS 1-3, relating to changes in ss. 19.52 and 196.24. But, SECTION 3 relates to s. 30.02 (3), not 19.52 or 196.24. Do you want to delete SECTION 3?

-----Original Message-----

From: Nowak, Ellen
Sent: Monday, January 05, 2004 12:39 PM
To: Nelson, Robert P.
Subject: LRB 3931/1

Hi Bob:

The last set of drafting instructions that I sent to you stated that Sec. 35 (Venue) should be deleted. That is incorrect - the section should stay in.

Thanks, Ellen.

Yes No → Changes to ~~2931~~

Chapter 227 Drafting Instructions

(Changes are provisions in LRB-3880/P1)

Dec. 30, 2003

SECTION 1-3 (Changes to s. 19.52 and s. 196.24). Delete. (227.46 remains)

SECTION 5 (Economic Impact Reports). Revised to read:

227.137 Economic impact reports of rules. (1) This section applies only to [DOT, DNR, DWD, DATCP, and Commerce].

(2) After an agency publishes a statement of the scope of a proposed rule under s. 227.135, and before the agency submits the proposed rule to the legislative council for review under s. 227.15, a municipality, an association that represents a farm, labor, business, or professional group having an interest in the proposed rule, or 5 or more persons that demonstrate they would be directly and uniquely affected by the proposed rule, may petition the department of administration for a determination on the preparation of an economic impact report of the proposed rule. The secretary of administration may direct the agency to prepare an economic impact report before submitting the proposed rule to the legislative council under s. 227.15. The agency shall prepare an economic impact report before submitting the proposed rule to the legislative council under s. 227.15 if the secretary of administration has determined all of the following apply:

(a) The petition was submitted to the secretary of administration no later than 90 days after the publication of the statement of the scope of a proposed rule or no later than 10 days after the publication of the notice for public hearing, whichever is earlier.

(b) The proposed rule would cost affected persons \$20 million or more during each of the first five years of the rule's implementation to comply with the rule or the rule would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(3) An economic impact report shall contain information on the effect of the proposed rule on specific businesses, business sectors, and the state's economy. When preparing the report, the agency shall solicit information and advice from the department of commerce and governmental units, associations, businesses, and individuals that may be affected by the proposed rule. The agency may request information that is reasonably necessary for the preparation of an economic impact report from other state agencies, governmental units, associations, businesses, and individuals. The economic impact report shall include all of the following:

An economic impact report shall include all of the following:

(a) An analysis and quantification of the problem, including any risks to public health or the environment that the rule is intending to address.

(b) An analysis and quantification of the economic impact of the rule, including costs reasonably expected to be incurred by the state, governmental units, associations, businesses, and affected individuals.

need, & "friz"

- (c) An analysis of benefits of the, including how the rule reduces the risks and addresses the problems that the rule is intended to address.
- (4) The agency shall submit the economic impact report to the legislative council staff, to the department of administration, and to the petitioner.
- (5) This section does not apply to emergency rules promulgated under s. 227.24.

SECTION 6 (DOA Review). Amend proposed s. 227.138 of the statutes to read:

227.138 Department of administration review of proposed rules. (1) In this section:

- (a) "Department" means the department of administration.
- (b) "Economic impact report" means a report prepared under s. 227.137.
- (c) ~~"Guideline or policy" includes any agency comments or policies in response to federal regulations.~~

(2) ~~If the department receives an economic impact report will be prepared under s. 227.137 (4) regarding a proposed rule, the department shall review the proposed rule and issue a report. A municipality, an association that represents a farm, labor, business, or professional group, or 5 or more persons having an interest in a proposed rule may petition the department to review the proposed rule. If the department determines that the petitioner may be economically affected by the proposed rule, the department shall review the proposed rule and issue a report. The department shall notify the agency that a report will be prepared and that~~ The agency shall not submit a proposed rule to the legislative council for review under s. 227.15 (1) until the agency receives a copy of the department's report and the approval of the secretary of the department of administration. The report shall include all of the following findings:

- (a) ~~If an economic impact report was prepared as required under s. 227.137 (1), that t~~ The economic impact report and the analysis required under s. 227.137 (3) are supported by related documentation contained in the economic impact report.
- (b) That the agency has ~~clear~~ statutory authority to promulgate the proposed rule.
- (c) That the proposed rule, including any administrative requirements, is consistent with and not duplicative of other state rules or federal regulations.
- (d) ~~That the proposed rule is consistent with the governor's positions and priorities, including those related to economic development.~~
- (e) That the agency used has adequately documented the data, studies, and other sources of information, and analytical methodologies used in developing the proposed rule that is complete, accurate, and derived from accepted scientific methodologies.
- (3) Before issuing a report under sub. (2), the department may return a proposed rule to the agency for further consideration and revision with a written explanation of why the proposed rule is returned. If the agency head disagrees with the department's reasons for returning the proposed rule, the agency head shall so notify the department in writing. The department secretary shall approve the proposed rule when the agency has adequately addressed the issues raised during the department's review of the rule. ~~The department shall submit a statement to the governor indicating the department's approval of the proposed rule, the~~

correspondence between the agency and the department related to the proposed rule, and a copy of its report regarding the proposed rule.

~~(4) If the department receives an economic impact report under s. 227.137 (4) regarding a proposed or existing guideline or policy, the department shall review the guideline or policy and issue a report. A municipality, an association that represents a farm, labor, business, or professional group, or 5 or more persons having an interest in a proposed or existing guideline or policy may petition the department to review the guideline or policy. If the department determines that the petitioner may be economically affected by the guideline or policy, the department shall review the guideline or policy and issue a report. The department shall notify the agency that a report will be prepared. The report shall include findings consistent with those under sub. (2) and include the following findings:~~

~~(a) If an economic impact report was prepared as required under s. 227.137 (4), that the report and the analysis required under s. 227.137 (3) are supported by related documentation contained in the economic impact report.~~

~~(b) That the guideline or policy is consistent with and does not exceed the agency's statutory authority.~~

~~(c) That the guideline or policy is consistent with the governor's positions and priorities, including those related to economic development.~~

~~(d) That the guideline or policy is of the type that is not required to be promulgated as a rule.~~

~~(5) Before issuing a report under sub. (4), the department may prohibit an agency from implementing a proposed guideline or policy until the department secretary determines that the proposed guideline or policy meets the criteria under sub. (4) (a)~~

✓ SECTION 13 & 14 (Governor Approval). Delete.

✓ SECTION 15 (Inclusion of EIR, DOA Report, and Gov Approval). Delete "a copy of the written approval of the governor under s. 227.185."

✓ SECTION 19 (Judicial Review). Delete.

✓ SECTION 22 (Substitution). Delete.

✓ SECTION 23-24 (Discovery). Delete.

✓ SECTION 26-32, 34 (Proposed Decisions). Delete.

~~No~~ SECTION 35 (Venue). Delete. *No, see 12/5 e-mail*

✓ SECTION 36 (Inconsistent Positions). Delete.

✓ SECTION 37 (Changes to s. 289.24). Delete.

✓ SECTION 38-39 (Changes to 448). Delete.