



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

regen

1 AN ACT *to repeal* 19.52 (4), 227.45 (7) (a) to (d), 227.46 (2), 227.46 (2m), 227.46
 2 (3) and 227.46 (4); *to renumber and amend* 227.45 (7) (intro.); *to amend*
 3 19.52 (3), 196.24 (3), 227.14 (2) (a), 227.19 (2), 227.19 (3) (intro.), 227.19 (3) (a),
 4 227.19 (3) (b), 227.46 (1) (intro.), 227.46 (1) (h), 227.46 (6), 227.47 (1), 227.485
 5 (5), 227.53 (1) (a) 3., 289.27 (5), 448.02 (3) (b) and 448.675 (1) (b); and *to create*
 6 227.135 (1) (f), 227.137, 227.138, 227.14 (2) (a) 3., 227.14 (2) (a) 4., 227.14 (2) (a)
 7 5., 227.14 (2) (a) 6., 227.14 (4) (b) 3., 227.185, 227.19 (3) (cm), 227.40 (4m),
 8 227.43 (1g), 227.44 (2) (d), 227.445, 227.483 and 227.57 (11) of the statutes;
 9 **relating to:** administrative rules and hearings.

Analysis by the Legislative Reference Bureau

This bill makes numerous changes to the administrative rule making and hearing procedures. The bill:

1. Expands the judicial review of the agency rule-making process as follows:
 - * a. Requires a court, when determining if a promulgated rule is valid, to confine its review to the agency record unless it is necessary to supplement that record with additional evidence.
 - * 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

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analysis;
Substitute
Prelim. note.
Thanks.

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. 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 rule 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.

* 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 establish a system for assigning hearing examiners to preside over administrative hearings that results in the hearing examiners hearing different subjects on a rotating basis.

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

8. Prohibits a hearing examiner from addressing whether a law or rule is constitutional.

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:

SECTION 1. 19.52 (3) of the statutes is amended to read:

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

The heard hearing examiner shall not find a violation of this subchapter or subch.

III of ch. 13 except upon clear and convincing evidence admitted at the hearing.

SECTION 2. 19.52 (4) of the statutes is repealed.

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

196.24 (3) The commission may conduct any number of investigations contemporaneously through different agents, and may delegate to any agent the

authority to take testimony bearing upon any investigation or at any hearing. The

decision of the commission shall comply with s. 227.46 and shall be based upon its

records and upon the evidence before it, except that, notwithstanding s. 227.46 (4),

a decision maker may hear a case or read or review the record of a case if the record

includes a synopsis or summary of the testimony and other evidence presented at the

1 hearing that is prepared by the commission staff. Parties shall have an opportunity
2 to demonstrate to a decision maker that a synopsis or summary prepared under this
3 subsection is not sufficiently complete or accurate to fairly reflect the relevant and
4 material testimony or other evidence presented at a hearing.

5 SECTION 4. 227.135 (1) (f) of the statutes is created to read:

6 227.135 (1) (f) A summary and preliminary comparison of any existing or
7 proposed federal regulation that is intended to address the activities to be regulated
8 by the rule.

9 SECTION 5. 227.137 of the statutes is created to read:

10 227.137 Economic impact reports of ^{g (b) proposed} ~~guidelines, policies, and~~ rules. (1) insert 4-10 ✓

11 After an agency publishes a statement of the scope of a proposed rule, under s.
12 227.135, and before the agency submits the proposed rule to the legislative council
13 for review under s. 227.15, a municipality, an association that represents a farm,
14 labor, business, or professional group, or 5 or more persons having an interest in the
15 proposed rule ^{insert 4-15 ✓} may petition the agency to prepare an economic impact report of the
16 proposed rule. If the agency determines that the petitioner may be economically
17 affected by the proposed rule, the agency shall prepare an economic impact report
18 before submitting the proposed rule to the legislative council under s. 227.15.

19 (2) A municipality, an association that represents a farm, labor, business, or
20 professional group, or 5 or more persons affected by an existing or proposed agency
21 guideline or policy, including agency comments and policies in response to federal
22 regulations, may petition the agency to prepare an economic impact report for that
23 existing or proposed agency guideline or policy. If the agency determines that the
24 petitioner may be economically affected by the proposed or existing guideline or
25 policy, the agency shall prepare an economic impact report.

1 (3) An economic impact report shall contain information on the effect of the
2 proposed rule ~~or existing or proposed guideline or policy~~ on specific businesses,
3 business sectors, and the state's economy. When preparing the report, the agency
4 shall solicit information and advice from the department of commerce, and from
5 governmental units, associations, businesses, and individuals that may be affected
6 by the proposed rule ~~or existing or proposed guideline or policy~~. The agency may
7 request information that is reasonably necessary for the preparation of an economic
8 impact report from other state agencies, governmental units, associations,
9 businesses, and individuals ~~but no one is required to respond to that request~~. The
10 economic impact report shall include all of the following:

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

13 (b) An analysis and quantification of the economic impact of the ~~guideline,~~
14 ~~policy, or~~ rule, including ~~direct, indirect, and consequential~~ costs reasonably
15 expected to be incurred by the state, governmental units, associations, businesses,
16 and affected individuals.

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

20 (d) An analysis of benefits of the ~~guideline, policy, or~~ rule, including how the
21 ~~guideline, policy, or~~ rule reduces the risks and addresses the problems that the
22 ~~guideline, policy, or~~ rule is intended to address.

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

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

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

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

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

15 (5) This section does not apply to emergency rules promulgated under s.
16 227.24.

17 SECTION 6. 227.138 of the statutes is created to read:

18 227.138 Department of administration review of proposed rules. (1)

19 In this section:

20 (a) *Agency* has the meaning given in s. 227.137(1)

(b) "Department" means the department of administration.

21 (c) "Economic impact report" means a report prepared under s. 227.137.

22 (d) "Guideline or policy" includes any agency comments or policies in response
23 to federal regulations.

24 (2) If ~~the department receives~~ *will be prepared* an economic impact report under s. 227.137
25 regarding a proposed rule, the department shall review the proposed rule and issue

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

10 (a) ^{That the} ~~an~~ economic impact report ~~was prepared as required under s. 227.137 (1),~~
 11 ~~that the report~~ and the analysis required under s. 227.137 (3) are supported by
 12 related documentation contained in the economic impact report.

13 (b) That the agency has ~~the~~ statutory authority to promulgate the proposed
 14 rule.

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

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

19 (e) That the agency ^{has adequately documented the} ~~used~~ data, studies, ~~and~~ other sources of information in
 20 developing the proposed rule ~~that is complete, accurate, and derived from accepted~~
 21 ~~scientific methodologies.~~

22 (3) Before issuing a report under sub. (2), the department may return a
 23 proposed rule to the agency for further consideration and revision with a written
 24 explanation of why the proposed rule is returned. If the agency head disagrees with
 25 the department's reasons for returning the proposed rule, the agency head shall so

↑ and analytical methodologies used

STET "S"
of administration

1 notify the department in writing. The ~~department~~ secretary shall approve the
 2 proposed rule when the agency has adequately addressed the issues raised during
 3 the department's review of the rule. The department shall submit a statement to the
 4 governor indicating the department's approval of the proposed rule, the
 5 correspondence between the agency and the department related to the proposed rule,
 6 and a copy of its report regarding the proposed rule.

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

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

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

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

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

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

5 **SECTION 7.** 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.

13 2. A brief summary of the proposed rule.

14 **SECTION 8.** 227.14 (2) (a) 3. of the statutes is created to read:

15 227.14 (2) (a) 3. A summary of and preliminary comparison with any existing
16 or proposed federal regulation that is intended to address the activities to be
17 regulated by the proposed rule.

18 **SECTION 9.** 227.14 (2) (a) 4. of the statutes is created to read:

19 227.14 (2) (a) 4. A comparison of similar rules in adjacent states.

20 **SECTION 10.** 227.14 (2) (a) 5. of the statutes is created to read:

21 227.14 (2) (a) 5. A summary of the factual data and analytical methodologies
22 that the agency used in support of the proposed rule and how any related findings
23 support the regulatory approach chosen for the proposed rule.

24 **SECTION 11.** 227.14 (2) (a) 6. of the statutes is created to read:

1 227.14 (2) (a) 6. Any analysis and supporting documentation that the agency
2 used in support of the agency's determination of the rule's effect on small businesses
3 under s. 227.114 or that was used when the agency prepared an economic impact
4 report under s. 227.137 (3).¹

5 **SECTION 12.** 227.14 (4) (b) 3. of the statutes is created to read:

6 227.14 (4) (b) 3. For rules that the agency determines may have a significant
7 fiscal effect on the private sector, the anticipated costs that will be incurred by the
8 private sector in complying with the rule.

9 **SECTION 13.** 227.185 of the statutes is created to read:

10 **227.185 Approval by governor.** After a proposed rule is in final draft form
11 and approved by the department of administration if required under s. 227.138 (3),
12 the agency shall submit the rule to the governor. The governor may approve, modify,
13 or reject the proposed rule. If the governor approves a proposed rule, the governor
14 shall provide the agency with a written notice of that approval. No proposed rule may
15 be submitted to the legislature for review under s. 227.19 (2) or filed with the office
16 of secretary of state or revisor unless the governor has approved or modified and
17 approved the proposed rule in writing. This section does not apply to emergency
18 rules promulgated under s. 227.24.

19 **SECTION 14.** 227.19 (2) of the statutes is amended to read:

20 **227.19 (2) NOTIFICATION OF LEGISLATURE.** An agency shall submit a notice to the
21 presiding officer of each house of the legislature when a proposed rule is in final draft
22 form and approved by the governor. The notice shall be submitted in triplicate and
23 shall be accompanied by a report in the form specified under sub. (3). A notice
24 received under this subsection on or after September 1 of an even-numbered year
25 shall be considered received on the first day of the next regular session of the

1 legislature. Each presiding officer shall, within 7 working days following the day on
2 which the notice and report are received, refer them to one committee, which may
3 be either a standing committee or a joint legislative committee created by law, except
4 the joint committee for review of administrative rules. The agency shall submit to
5 the revisor for publication in the register a statement that a proposed rule has been
6 submitted to the presiding officer of each house of the legislature. Each presiding
7 officer shall enter a similar statement in the journal of his or her house.

8 **SECTION 15.** 227.19 (3) (intro.) of the statutes is amended to read:

9 227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be
10 in writing and shall include the proposed rule in the form specified in s. 227.14 (1),
11 the material specified in s. 227.14 (2) to (4), a copy of any economic impact report
12 prepared by the agency under s. 227.137, a copy of the report prepared by the
13 department of administration under s. 227.138, ~~a copy of the written approval of the~~
14 governor under s. 227.18a, a copy of any recommendations of the legislative council
15 staff, and an analysis. The analysis shall include:

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

17 227.19 (3) (a) A detailed statement explaining the need for basis and purpose
18 of the proposed rule, including how the proposed rule advances relevant statutory
19 goals or purposes.

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

21 227.19 (3) (b) An A summary of public comments to the proposed rule and the
22 agency's response to those comments, and an explanation of any modification made
23 in the proposed rule as a result of public comments or testimony received at a public
24 hearing.

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

1 227.19 (3) (cm) Any changes to the analysis prepared under s. 227.14 (2) or the
2 fiscal estimate prepared under s. 227.14 (4).

3 **SECTION 19.** 227.40 (4m) of the statutes is created to read:

4 ~~227.40 (4m) (a) In any proceeding under this section for judicial review of a~~
5 ~~rule, the court shall conduct the review without a jury. The review shall be confined~~
6 ~~to a substantial inquiry of the agency record, as necessarily and appropriately~~
7 ~~supplemented by evidence presented to the court. The agency record includes the~~
8 ~~economic impact report and documentation required under s. 227.137 (3), the~~
9 ~~analysis and documentation required under ss. 227.14 (2) and 227.19 (3), and public~~
10 ~~comments on the rule.~~

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

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

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

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

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

12 (g) If a court finds that the agency's analysis and determinations under s.
13 227.137 (3) are arbitrary and capricious, the court shall find the rule invalid as
14 without compliance with statutory rule-making procedures set forth in this chapter.

15 **SECTION 20.** 227.43 (1g) of the statutes is created to read:

16 227.43 (1g) The administrator of the division of hearings and appeals shall
17 establish a system for assigning hearing examiners to preside over any hearing
18 under this section. The system shall ensure, to the extent practicable, that hearing
19 examiners are assigned to different subjects on a rotating basis. The system may
20 include the establishment of pools of examiners responsible for certain subjects.

21 **SECTION 21.** 227.44 (2) (d) of the statutes is created to read:

22 227.44 (2) (d) The name and title of the person who will conduct the hearing.

23 **SECTION 22.** 227.445 of the statutes is created to read:

24 **227.445 Substitution of hearing examiner.** (1) A person requesting a
25 hearing before a hearing examiner may file a written request for a substitution of a

1 new hearing examiner for the hearing examiner assigned to the matter. The written
2 request shall be filed not later than 10 days after receipt of the notice under s. 227.44.

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

4 (3) Upon receipt of the written request, the original hearing examiner shall
5 have no further jurisdiction in the matter except to determine if the request was
6 made timely and in proper form. If the hearing examiner fails to make a
7 determination as to allowing the substitution within 7 days, the hearing examiner
8 shall refer the matter to the administrator of the division of hearings and appeals for
9 the determination and reassignment of the hearing as necessary. If the written
10 request is determined to be proper, the matter shall be transferred to another
11 hearing examiner. Upon transfer, the hearing examiner shall transmit to the new
12 hearing examiner all the papers in the matter.

13 **SECTION 23.** 227.45 (7) (intro.) of the statutes is renumbered 227.45 (7) and
14 amended to read:

15 227.45 (7) In any class 2 proceeding, each party shall have the right, prior to
16 the date set for hearing, to take and preserve evidence as provided in ch. 804. Upon
17 motion by a party or by the person from whom discovery is sought in any class 2
18 proceeding, and for good cause shown, the hearing examiner may make any order in
19 accordance with s. 804.01 which justice requires to protect a party or person from
20 annoyance, embarrassment, oppression, or undue burden or expense. In any class
21 1 or class 3 proceeding, an agency may by rule permit the taking and preservation
22 of evidence, but in every such proceeding the taking and preservation of evidence
23 shall be permitted with respect to a witness:

24 **SECTION 24.** 227.45 (7) (a) to (d) of the statutes are repealed.

25 **SECTION 25.** 227.46 (1) (intro.) of the statutes is amended to read:

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

8 **SECTION 26.** 227.46 (1) (h) of the statutes is amended to read:

9 227.46 (1) (h) Make ~~or recommend~~ findings of fact, conclusions of law, and
10 decisions to the extent permitted by law.

11 **SECTION 27.** 227.46 (2) of the statutes is repealed.

12 **SECTION 28.** 227.46 (2m) of the statutes is repealed.

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

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

15 **SECTION 31.** 227.46 (6) of the statutes is amended to read:

16 227.46 (6) The functions of persons presiding at a hearing or participating in
17 ~~proposed or~~ final decisions shall be performed in an impartial manner. A hearing
18 examiner or agency official may at any time disqualify himself or herself. In class
19 2 and 3 proceedings, on the filing in good faith of a timely and sufficient affidavit of
20 personal bias or other disqualification of a hearing examiner or official, the agency
21 or hearing examiner shall determine the matter as part of the record and decision
22 in the case.

23 **SECTION 32.** 227.47 (1) of the statutes is amended to read:

24 227.47 (1) Except as provided in sub. (2), every ~~proposed or~~ final decision of an
25 agency or hearing examiner following a hearing and every final decision of an agency

1 shall be in writing accompanied by findings of fact and conclusions of law. The
2 findings of fact shall consist of a concise and separate statement of the ultimate
3 conclusions upon each material issue of fact without recital of evidence. Every
4 proposed or final decision shall include a list of the names and addresses of all
5 persons who appeared before the agency in the proceeding who are considered
6 parties for purposes of review under s. 227.53. The agency shall by rule establish a
7 procedure for determination of parties.

8 **SECTION 33.** 227.483 of the statutes is created to read:

9 **227.483 Costs upon frivolous claims.** (1) If a hearing examiner finds, at
10 any time during the proceeding, that an administrative hearing commenced or
11 continued by a petitioner or a claim or defense used by a party is frivolous, the
12 hearing examiner shall award the successful party his or her costs, as determined
13 under s. 814.04, and reasonable attorney fees.

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

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

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

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

1 **SECTION 34.** 227.485 (5) of the statutes is amended to read:

2 227.485 (5) If the hearing examiner awards costs under sub. (3), he or she shall
3 determine the costs under this subsection, except as modified under sub. (4). The
4 decision on the merits of the case shall be placed in a ~~proposed~~ decision and
5 submitted under ss. 227.47 and 227.48. The prevailing party shall submit, within
6 30 days after service of the ~~proposed~~ decision, to the hearing examiner and to the
7 state agency which is the losing party an itemized application for fees and other
8 expenses, including an itemized statement from any attorney or expert witness
9 representing or appearing on behalf of the party stating the actual time expended
10 and the rate at which fees and other expenses were computed. The state agency
11 which is the losing party has 15 working days from the date of receipt of the
12 application to respond in writing to the hearing examiner. The hearing examiner
13 shall determine the amount of costs using the criteria specified in s. 814.245 (5) and
14 include an order for payment of costs in the final decision.

15 **SECTION 35.** 227.53 (1) (a) 3. of the statutes is amended to read:

16 227.53 (1) (a) 3. If the petitioner is a resident, the proceedings shall be held in
17 the circuit court for the county where the petitioner resides, except that if the
18 petitioner is an agency, the proceedings shall be in the circuit court for the county
19 where the respondent resides and except as provided in ss. 73.0301 (2) (b) 2., 77.59
20 (6) (b), 182.70 (6), and 182.71 (5) (g). ~~The proceedings shall be in the circuit court for~~
21 ~~Dane County if~~ If the petitioner is a nonresident, the proceedings shall be held in the
22 county where the property affected by the decision is located or, if no property is
23 affected, in the county where the dispute arose. If all parties stipulate and the court
24 to which the parties desire to transfer the proceedings agrees, the proceedings may
25 be held in the county designated by the parties. If 2 or more petitions for review of

1 the same decision are filed in different counties, the circuit judge for the county in
2 which a petition for review of the decision was first filed shall determine the venue
3 for judicial review of the decision, and shall order transfer or consolidation where
4 appropriate.

5 **SECTION 36.** 227.57 (11) of the statutes is created to read:

6 227.57 (11) If the decision of the hearing examiner is inconsistent with the
7 position taken at the hearing by the agency, the court shall give no deference to the
8 examiner's decision when conducting its review.

9 **SECTION 37.** 289.27 (5) of the statutes is amended to read:

10 289.27 (5) DETERMINATION OF NEED; DECISION BY HEARING EXAMINER. If a
11 contested case hearing is conducted under this section, the secretary shall issue any
12 decision concerning determination of need, notwithstanding s. 227.46 (2) to (4). The
13 secretary shall direct the hearing examiner to certify the record of the contested case
14 hearing to him or her without an intervening proposed decision. The secretary may
15 assign responsibility for reviewing this record and making recommendations
16 concerning the decision to any employee of the department.

17 **SECTION 38.** 448.02 (3) (b) of the statutes is amended to read:

18 448.02 (3) (b) After an investigation, if the board finds that there is probable
19 cause to believe that the person is guilty of unprofessional conduct or negligence in
20 treatment, the board shall hold a hearing on such conduct. The board may use any
21 information obtained by the board or the department under s. 655.17 (7) (b), as
22 created by 1985 Wisconsin Act 29, in an investigation or a disciplinary proceeding,
23 including a public disciplinary proceeding, conducted under this subsection and the
24 board may require a person holding a license, certificate or limited permit to undergo
25 ~~and may consider~~ the results of one or more physical, mental or professional

1 competency examinations if the board believes that the results of any such
2 examinations may be useful to the board in conducting its hearing. A unanimous
3 finding by a panel established under s. 655.02, 1983 stats., or a finding by a court that
4 a physician has acted negligently in treating a patient is conclusive evidence that the
5 physician is guilty of negligence in treatment. A finding that is not a unanimous
6 finding by a panel established under s. 655.02, 1983 stats., that a physician has acted
7 negligently in treating a patient is presumptive evidence that the physician is guilty
8 of negligence in treatment. A certified copy of the findings of fact, conclusions of law
9 and order of the panel or the order of a court is presumptive evidence that the finding
10 of negligence in treatment was made. The board shall render a decision within 90
11 days after the date on which the hearing is held or, if subsequent proceedings are
12 conducted under s. 227.46 (2), within 90 days after the date on which those
13 proceedings are completed.

14 **SECTION 39.** 448.675 (1) (b) of the statutes is amended to read:

15 448.675 (1) (b) After an investigation, if the affiliated credentialing board finds
16 that there is probable cause to believe that the person is guilty of unprofessional
17 conduct or negligence in treatment, the affiliated credentialing board shall hold a
18 hearing on such conduct. The affiliated credentialing board may require a licensee
19 to undergo and may consider the results of a physical, mental or professional
20 competency examination if the affiliated credentialing board believes that the
21 results of the examination may be useful to the affiliated credentialing board in
22 conducting its hearing. A finding by a court that a podiatrist has acted negligently
23 in treating a patient is conclusive evidence that the podiatrist is guilty of negligence
24 in treatment. A certified copy of the order of a court is presumptive evidence that the
25 finding of negligence in treatment was made. The affiliated credentialing board

1 shall render a decision within 90 days after the date on which the hearing is held or,
2 if subsequent proceedings are conducted under s. 227.46 (2), within 90 days after the
3 date on which those proceedings are completed.

4

(END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3880/P2ins
RPN:wlj:rs

1 insert 4-10:

2 **No ff**

3 In this section, "agency" means the departments of agriculture, trade, and
4 consumer protection; commerce; natural resources; transportation; and workforce
5 development.

6 (2)

7 insert 4-15:

8 **No ff**

9 submit a petition to the department of administration asking that the secretary
10 of administration direct the agency to prepare an economic impact report for the
11 proposed rule. The agency shall prepare an economic impact report before
12 submitting the proposed rule to the legislative council staff under s. 227.15 if the
13 secretary of administration directs the agency to prepare that report. The secretary
14 of administration may direct the agency to prepare an economic impact report for the
15 proposed rule before submitting the proposed rule to the legislative council ^{staff} under s.
16 227.15 if the secretary determines that all of the following apply:

17 (a) The petition was submitted to the department of administration no later
18 than 90 days after the publication of the statement of the scope of the proposed rule
19 under s. 227.135 (3) or no later than 10 days after publication of the notice for a public
20 hearing under s. 227.17, whichever is earlier.

21 (b) The proposed rule would cost affected persons \$20 million or more during
22 each of the first ⁵ years after 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

1 economy, productivity, competition, jobs, the environment, public health or safety, or
2 state, local, or tribal governments or communities.

3

Nelson, Robert P.

From: Nowak, Ellen
Sent: Tuesday, January 06, 2004 11:01 AM
To: Nelson, Robert P.
Subject: LRB 3880

1-5683

Importance: High

Per my voicemail - here are 2 changes that need to be made to 3380/P2

not needed

1) Page 2, line 7: regarding the standing that a group needs to show, the administration and our team agreed that the following language must be included in the bill: "or 5 or more persons that demonstrate they would be directly and uniquely affected by the proposed rule"

2) Regarding economic impact reports: There are 2 ways that they can/will be done. The first is by the secretary of DOA. He/she has complete discretion whether or not to request one. The second way is if the rule meets that requirements under (a) and (b) on page 2. So the word "may" on line 13 should really be changed to "shall" - but I don't know if this will take care of it. Does it cause a problem having shall in the previous sentence?



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

REGEN

1 AN ACT *to amend* 227.14 (2) (a), 227.19 (3) (intro.), 227.19 (3) (a), 227.19 (3) (b),
2 227.46 (1) (intro.) and 227.53 (1) (a) 3.; and *to create* 227.135 (1) (f), 227.137,
3 227.138, 227.14 (2) (a) 3., 227.14 (2) (a) 4., 227.14 (2) (a) 5., 227.14 (2) (a) 6.,
4 227.14 (4) (b) 3., 227.19 (3) (cm), 227.43 (1g), 227.44 (2) (d) and 227.483 of the
5 statutes; **relating to:** administrative rules and hearings.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

6 SECTION 1. 227.135 (1) (f) of the statutes is created to read:
7 227.135 (1) (f) A summary and preliminary comparison of any existing or
8 proposed federal regulation that is intended to address the activities to be regulated
9 by the rule.

10 SECTION 2. 227.137 of the statutes is created to read:

insert 2-7 ✓

1 **227.137 Economic impact reports of proposed rules.** (1) In this section,
2 “agency” means the departments of agriculture, trade, and consumer protection;
3 commerce; natural resources; transportation; and workforce development.

4 (2) After an agency publishes a statement of the scope of a proposed rule under
5 s. 227.135, and before the agency submits the proposed rule to the legislative council
6 for review under s. 227.15, a municipality, an association that represents a farm,
7 labor, business, or professional group, or 5 or more persons ~~having an interest in~~
8 proposed rule may submit a petition to the department of administration asking that
9 the secretary of administration direct the agency to prepare an economic impact
10 report for the proposed rule. The agency shall prepare an economic impact report
11 before submitting the proposed rule to the legislative council staff under s. 227.15 if
12 the secretary of administration directs the agency to prepare that report. The
13 secretary of administration may direct the agency to prepare an economic impact
14 report for the proposed rule before submitting the proposed rule to the legislative
15 council staff under s. 227.15 ~~if the secretary determines that all of the following~~
16 apply:

insert 2-15

17 (a) The petition was submitted to the department of administration no later
18 than 90 days after the publication of the statement of the scope of the proposed rule
19 under s. 227.135 (3) or no later than 10 days after publication of the notice for a public
20 hearing under s. 227.17, whichever is earlier.

21 (b) The proposed rule would cost affected persons \$20 million or more during
22 each of the first 5 years after the rule’s implementation to comply with the rule, or
23 the rule would adversely affect in a material way the economy, a sector of the
24 economy, productivity, competition, jobs, the environment, public health or safety, or
25 state, local, or tribal governments or communities.

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

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

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

14 (c) An analysis of benefits of the rule, including how the rule reduces the risks
15 and addresses the problems that the rule is intended to address.

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

18 (5) This section does not apply to emergency rules promulgated under s.
19 227.24.

20 **SECTION 3.** 227.138 of the statutes is created to read:

21 **227.138 Department of administration review of proposed rules. (1)**

22 In this section:

23 (a) "Agency" has the meaning given in s. 227.137 (1).

24 (b) "Department" means the department of administration.

25 (c) "Economic impact report" means a report prepared under s. 227.137.

1 (2) If an economic impact report will be prepared under s. 227.137 (2) regarding
2 a proposed rule, the department shall review the proposed rule and issue a report.
3 The agency shall not submit a proposed rule to the legislative council staff for review
4 under s. 227.15 (1) until the agency receives a copy of the department's report and
5 the approval of the secretary of administration. The report shall include all of the
6 following findings:

7 (a) That the economic impact report and the analysis required under s. 227.137
8 (3) are supported by related documentation contained in the economic impact report.

9 (b) That the agency has statutory authority to promulgate the proposed rule.

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

12 (d) That the agency has adequately documented the data, studies, other
13 sources of information, and analytical methodologies used in developing the
14 proposed rule.

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

22 **SECTION 4.** 227.14 (2) (a) of the statutes is amended to read:

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

1 1. A reference to each statute that the proposed rule interprets, each statute
2 that authorizes its promulgation, each related statute or related rule, and –a– an
3 explanation of the agency’s authority to promulgate the proposed rule under those
4 statutes.

5 2. A brief summary of the proposed rule.

6 **SECTION 5.** 227.14 (2) (a) 3. of the statutes is created to read:

7 227.14 (2) (a) 3. A summary of and preliminary comparison with any existing
8 or proposed federal regulation that is intended to address the activities to be
9 regulated by the proposed rule.

10 **SECTION 6.** 227.14 (2) (a) 4. of the statutes is created to read:

11 227.14 (2) (a) 4. A comparison of similar rules in adjacent states.

12 **SECTION 7.** 227.14 (2) (a) 5. of the statutes is created to read:

13 227.14 (2) (a) 5. A summary of the factual data and analytical methodologies
14 that the agency used in support of the proposed rule and how any related findings
15 support the regulatory approach chosen for the proposed rule.

16 **SECTION 8.** 227.14 (2) (a) 6. of the statutes is created to read:

17 227.14 (2) (a) 6. Any analysis and supporting documentation that the agency
18 used in support of the agency’s determination of the rule’s effect on small businesses
19 under s. 227.114 or that was used when the agency prepared an economic impact
20 report under s. 227.137 (3).

21 **SECTION 9.** 227.14 (4) (b) 3. of the statutes is created to read:

22 227.14 (4) (b) 3. For rules that the agency determines may have a significant
23 fiscal effect on the private sector, the anticipated costs that will be incurred by the
24 private sector in complying with the rule.

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

1 227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be
2 in writing and shall include the proposed rule in the form specified in s. 227.14 (1),
3 the material specified in s. 227.14 (2) to (4), a copy of any economic impact report
4 prepared by the agency under s. 227.137, a copy of the report prepared by the
5 department of administration under s. 227.138, a copy of any recommendations of
6 the legislative council staff, and an analysis. The analysis shall include:

7 **SECTION 11.** 227.19 (3) (a) of the statutes is amended to read:

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

11 **SECTION 12.** 227.19 (3) (b) of the statutes is amended to read:

12 227.19 (3) (b) ~~An~~ A summary of public comments to the proposed rule and the
13 agency's response to those comments, and an explanation of any modification made
14 in the proposed rule as a result of public comments or testimony received at a public
15 hearing.

16 **SECTION 13.** 227.19 (3) (cm) of the statutes is created to read:

17 227.19 (3) (cm) Any changes to the analysis prepared under s. 227.14 (2) or the
18 fiscal estimate prepared under s. 227.14 (4).

19 **SECTION 14.** 227.43 (1g) of the statutes is created to read:

20 227.43 (1g) The administrator of the division of hearings and appeals shall
21 establish a system for assigning hearing examiners to preside over any hearing
22 under this section. The system shall ensure, to the extent practicable, that hearing
23 examiners are assigned to different subjects on a rotating basis. The system may
24 include the establishment of pools of examiners responsible for certain subjects.

25 **SECTION 15.** 227.44 (2) (d) of the statutes is created to read:

1 227.44 (2) (d) The name and title of the person who will conduct the hearing.

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

3 227.46 (1) (intro.) Except as provided under s. 227.43 (1), an agency may
4 designate an official of the agency or an employee on its staff or borrowed from
5 another agency under s. 20.901 or 230.047 as a hearing examiner to preside over any
6 contested case. In hearings under s. 19.52, a reserve judge shall be appointed. A
7 hearing examiner does not have authority to address whether a statute or
8 administrative rule is constitutional. Subject to rules of the agency, examiners
9 presiding at hearings may:

10 **SECTION 17.** 227.483 of the statutes is created to read:

11 **227.483 Costs upon frivolous claims.** (1) If a hearing examiner finds, at
12 any time during the proceeding, that an administrative hearing commenced or
13 continued by a petitioner or a claim or defense used by a party is frivolous, the
14 hearing examiner shall award the successful party his or her costs, as determined
15 under s. 814.04, and reasonable attorney fees.

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

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

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

24 (b) That the party or the party's attorney knew, or should have known, that the
25 petition, claim, or defense was without any reasonable basis in law or equity and

1 could not be supported by a good faith argument for an extension, modification, or
2 reversal of existing law.

3 **SECTION 18.** 227.53 (1) (a) 3. of the statutes is amended to read:

4 227.53 (1) (a) 3. If the petitioner is a resident, the proceedings shall be held in
5 the circuit court for the county where the petitioner resides, except that if the
6 petitioner is an agency, the proceedings shall be in the circuit court for the county
7 where the respondent resides and except as provided in ss. 73.0301 (2) (b) 2., 77.59
8 (6) (b), 182.70 (6), and 182.71 (5) (g). ~~The proceedings shall be in the circuit court for~~
9 ~~Dane County if~~ If the petitioner is a nonresident, the proceedings shall be held in the
10 county where the property affected by the decision is located or, if no property is
11 affected, in the county where the dispute arose. If all parties stipulate and the court
12 to which the parties desire to transfer the proceedings agrees, the proceedings may
13 be held in the county designated by the parties. If 2 or more petitions for review of
14 the same decision are filed in different counties, the circuit judge for the county in
15 which a petition for review of the decision was first filed shall determine the venue
16 for judicial review of the decision, and shall order transfer or consolidation where
17 appropriate.

18 (END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3880/P3ins
RPN:wlj:rs

1
2
3
4
5
6
7
8

No ff

insert 2-7:

that ~~demonstrate that they~~ would be directly and uniquely affected by

insert 2-15:

○ The secretary of administration shall direct the agency to prepare an economic impact report for the proposed rule before submitting the proposed rule to the legislative council staff under s. 227.15



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 227.14 (2) (a), 227.19 (3) (intro.), 227.19 (3) (a), 227.19 (3) (b),
2 227.46 (1) (intro.) and 227.53 (1) (a) 3.; and *to create* 227.135 (1) (f), 227.137,
3 227.138, 227.14 (2) (a) 3., 227.14 (2) (a) 4., 227.14 (2) (a) 5., 227.14 (2) (a) 6.,
4 227.14 (4) (b) 3., 227.19 (3) (cm), 227.43 (1g), 227.44 (2) (d) and 227.483 of the
5 statutes; **relating to:** administrative rules and hearings.

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This is a preliminary draft. An analysis will be provided in a later version.

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

6 **SECTION 1.** 227.135 (1) (f) of the statutes is created to read:
7 227.135 (1) (f) A summary and preliminary comparison of any existing or
8 proposed federal regulation that is intended to address the activities to be regulated
9 by the rule.
10 **SECTION 2.** 227.137 of the statutes is created to read:

1 **227.137 Economic impact reports of proposed rules.** (1) In this section,
2 “agency” means the departments of agriculture, trade, and consumer protection;
3 commerce; natural resources; transportation; and workforce development.

4 (2) After an agency publishes a statement of the scope of a proposed rule under
5 s. 227.135, and before the agency submits the proposed rule to the legislative council
6 for review under s. 227.15, a municipality, an association that represents a farm,
7 labor, business, or professional group, or 5 or more persons that would be directly and
8 uniquely affected by the proposed rule may submit a petition to the department of
9 administration asking that the secretary of administration direct the agency to
10 prepare an economic impact report for the proposed rule. The agency shall prepare
11 an economic impact report before submitting the proposed rule to the legislative
12 council staff under s. 227.15 if the secretary of administration directs the agency to
13 prepare that report. The secretary of administration may direct the agency to
14 prepare an economic impact report for the proposed rule before submitting the
15 proposed rule to the legislative council staff under s. 227.15. The secretary of
16 administration shall direct the agency to prepare an economic impact report for the
17 proposed rule before submitting the proposed rule to the legislative council staff
18 under s. 227.15 if the secretary determines that all of the following apply:

19 (a) The petition was submitted to the department of administration no later
20 than 90 days after the publication of the statement of the scope of the proposed rule
21 under s. 227.135 (3) or no later than 10 days after publication of the notice for a public
22 hearing under s. 227.17, whichever is earlier.

23 (b) The proposed rule would cost affected persons \$20 million or more during
24 each of the first 5 years after the rule’s implementation to comply with the rule, or
25 the rule would adversely affect in a material way the economy, a sector of the

1 economy, productivity, competition, jobs, the environment, public health or safety, or
2 state, local, or tribal governments or communities.

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

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

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

16 (c) An analysis of benefits of the rule, including how the rule reduces the risks
17 and addresses the problems that the rule is intended to address.

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

20 (5) This section does not apply to emergency rules promulgated under s.
21 227.24.

22 **SECTION 3.** 227.138 of the statutes is created to read:

23 **227.138 Department of administration review of proposed rules. (1)**

24 In this section:

25 (a) "Agency" has the meaning given in s. 227.137 (1).

1 (b) “Department” means the department of administration.

2 (c) “Economic impact report” means a report prepared under s. 227.137.

3 (2) If an economic impact report will be prepared under s. 227.137 (2) regarding
4 a proposed rule, the department shall review the proposed rule and issue a report.
5 The agency shall not submit a proposed rule to the legislative council staff for review
6 under s. 227.15 (1) until the agency receives a copy of the department’s report and
7 the approval of the secretary of administration. The report shall include all of the
8 following findings:

9 (a) That the economic impact report and the analysis required under s. 227.137
10 (3) are supported by related documentation contained in the economic impact report.

11 (b) That the agency has statutory authority to promulgate the proposed rule.

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

14 (d) That the agency has adequately documented the data, studies, other
15 sources of information, and analytical methodologies used in developing the
16 proposed rule.

17 (3) Before issuing a report under sub. (2), the department may return a
18 proposed rule to the agency for further consideration and revision with a written
19 explanation of why the proposed rule is returned. If the agency head disagrees with
20 the department’s reasons for returning the proposed rule, the agency head shall so
21 notify the department in writing. The secretary of administration shall approve the
22 proposed rule when the agency has adequately addressed the issues raised during
23 the department’s review of the rule.

24 SECTION 4. 227.14 (2) (a) of the statutes is amended to read:

1 227.14 (2) (a) An agency shall prepare in plain language an analysis of each
2 proposed rule, which shall be printed with the proposed rule when it is published or
3 distributed. The analysis shall include ~~a~~ all of the following:

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

8 2. A brief summary of the proposed rule.

9 **SECTION 5.** 227.14 (2) (a) 3. of the statutes is created to read:

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12 regulated by the proposed rule.

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15 **SECTION 7.** 227.14 (2) (a) 5. of the statutes is created to read:

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18 support the regulatory approach chosen for the proposed rule.

19 **SECTION 8.** 227.14 (2) (a) 6. of the statutes is created to read:

20 227.14 (2) (a) 6. Any analysis and supporting documentation that the agency
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23 report under s. 227.137 (3).

24 **SECTION 9.** 227.14 (4) (b) 3. of the statutes is created to read:

1 227.14 (4) (b) 3. For rules that the agency determines may have a significant
2 fiscal effect on the private sector, the anticipated costs that will be incurred by the
3 private sector in complying with the rule.

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

5 227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be
6 in writing and shall include the proposed rule in the form specified in s. 227.14 (1),
7 the material specified in s. 227.14 (2) to (4), a copy of any economic impact report
8 prepared by the agency under s. 227.137, a copy of the report prepared by the
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10 the legislative council staff, and an analysis. The analysis shall include:

11 **SECTION 11.** 227.19 (3) (a) of the statutes is amended to read:

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13 of the proposed rule, including how the proposed rule advances relevant statutory
14 goals or purposes.

15 **SECTION 12.** 227.19 (3) (b) of the statutes is amended to read:

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

20 **SECTION 13.** 227.19 (3) (cm) of the statutes is created to read:

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

23 **SECTION 14.** 227.43 (1g) of the statutes is created to read:

24 227.43 (1g) The administrator of the division of hearings and appeals shall
25 establish a system for assigning hearing examiners to preside over any hearing

1 under this section. The system shall ensure, to the extent practicable, that hearing
2 examiners are assigned to different subjects on a rotating basis. The system may
3 include the establishment of pools of examiners responsible for certain subjects.

4 **SECTION 15.** 227.44 (2) (d) of the statutes is created to read:

5 227.44 (2) (d) The name and title of the person who will conduct the hearing.

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

7 227.46 (1) (intro.) Except as provided under s. 227.43 (1), an agency may
8 designate an official of the agency or an employee on its staff or borrowed from
9 another agency under s. 20.901 or 230.047 as a hearing examiner to preside over any
10 contested case. In hearings under s. 19.52, a reserve judge shall be appointed. A
11 hearing examiner does not have authority to address whether a statute or
12 administrative rule is constitutional. Subject to rules of the agency, examiners
13 presiding at hearings may:

14 **SECTION 17.** 227.483 of the statutes is created to read:

15 **227.483 Costs upon frivolous claims.** (1) If a hearing examiner finds, at
16 any time during the proceeding, that an administrative hearing commenced or
17 continued by a petitioner or a claim or defense used by a party is frivolous, the
18 hearing examiner shall award the successful party his or her costs, as determined
19 under s. 814.04, and reasonable attorney fees.

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

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

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

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

7 **SECTION 18.** 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 (END)