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Assembly Bill 131: Duration of Emergency Rules

Testimony before the Senate Committee on Homeland Security, Veterans and
Military Affairs and Government Reform
October 29, 2003

Chairman Brown and members of the Committee, thank you for the opportunity to submit written testimony on Assembly Bill 131.

The *regular* administrative rules procedure is a valuable tool for executive agencies to implement policies under the appropriate oversight of the Legislature. Additionally, *emergency* rules may be implemented under time constraints to preserve the public health, safety and welfare.

Under current law, emergency rules expire after a maximum of 150 days. The Joint Committee for Review of Administrative Rules (JCRAR) may grant any number of extensions totaling a maximum of 120 days.

While certain situations may call for emergency rules, some agencies are relying on the emergency rules process too often and with insufficient rationale, or in situations better suited for the normal administrative rules process.

Two examples include Department of Revenue implementation of agriculture use value assessment and Department of Natural Resources implementation of a snowmobile speed limit. Many other issues, large and small, also are administered through the emergency rules process.

Therefore, AB 131 would reduce the duration of effect of emergency rules from the current 150 days to 90 days to increase legislative oversight and agency accountability. This proposal lengthens the extension period to a maximum of 180 days. This retains the current law maximum possible duration of 270 days.

A similar proposal was incorporated into the last budget, however, Governor McCallum vetoed this provision, claiming it places "unnecessary restrictions on the executive branch and the emergency rule process".

I disagree. AB 131 is a simple way to retain appropriate legislative and public oversight of the emergency rules process. An initial duration of 90 days in no way impedes the executive branch from implementing such rules. But it will require the executive branch to plan further ahead and justify their actions more than under current law. This accountability is needed if we are truly trying to protect the public health, safety and welfare.

I urge your support of this legislation.

Respectfully submitted,

Steve Foti
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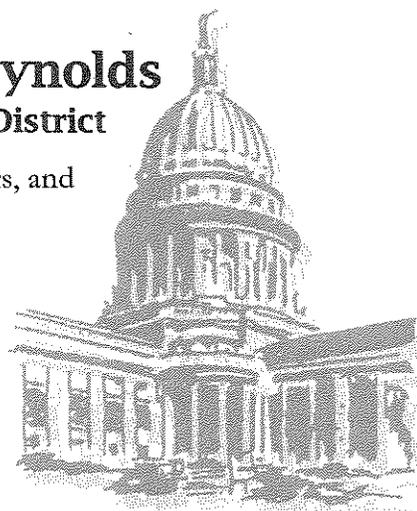
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State Senator Tom Reynolds

5th Senate District



To: Members, Homeland Security, Veterans and Military Affairs, and
Government Reform

From: Senator Tom Reynolds

Date: October 29, 2003

Re: Testimony on Assembly Bill 131

Chairman Brown and members of the committee, my name is Steve Krieser of Senator Tom Reynolds' office. I am appearing this morning for Senator Reynolds to testify in favor of Assembly Bill 131.

As you know, Wisconsin is fortunate to have one of the strongest Administrative Procedures Acts in the country. The core principle of executive branch rulemaking is that the power to make rules is one that belongs to the *Legislature*. For administrative purposes, the Legislature delegates some of this power to the executive branch. The Legislature does, however, retain its right of review through processes set forth in statute. In Wisconsin, the Legislature has a proud tradition of actively exercising this legislative right of review.

Assembly Bill 131 simply enhances the process by which the Legislature reviews and extends emergency rules. By statute, agencies may promulgate emergency rules only to address immediate threats to the public health, safety, and welfare. From time to time, however, this restriction is ignored as the emergency rules process is used to effectuate everything from snowmobile speed limits to significant changes in state and local tax policy.

Our office has provided a flowchart, which you should have before you, that shows how the emergency rule process currently works. AB 131 shortens the initial life of an emergency rule from 150 days to 90 days. This brings every emergency rule under the active review of the Joint Committee for Review of Administrative Rules, or JCRAR, much sooner after promulgation. This will help to enhance the process of legislative oversight of this powerful executive branch tool – allowing the Legislature to intercede earlier in cases where the rules process is being abused, short of actually suspending the rule.

The bill also streamlines the extension process for the balance of the life of the rule. Currently, the JCRAR typically meets three times to extend every emergency rule, by a maximum of 60 days at each of the first two meetings. Under the bill, they would only have to meet twice, to extend the rule for 90 days each time. This recognizes that many emergency rules are not abusive, and receive largely unanimous support by the JCRAR. These rules need not be reviewed three times over the course of 270 days.

The legislation before you continues Wisconsin's proud and vital tradition of legislative oversight of the rulemaking process. It strikes the right balance between early review of emergency rules and streamlined subsequent effective date extensions. It is good public policy, and I urge the committee to recommend it for concurrence. Thank you.

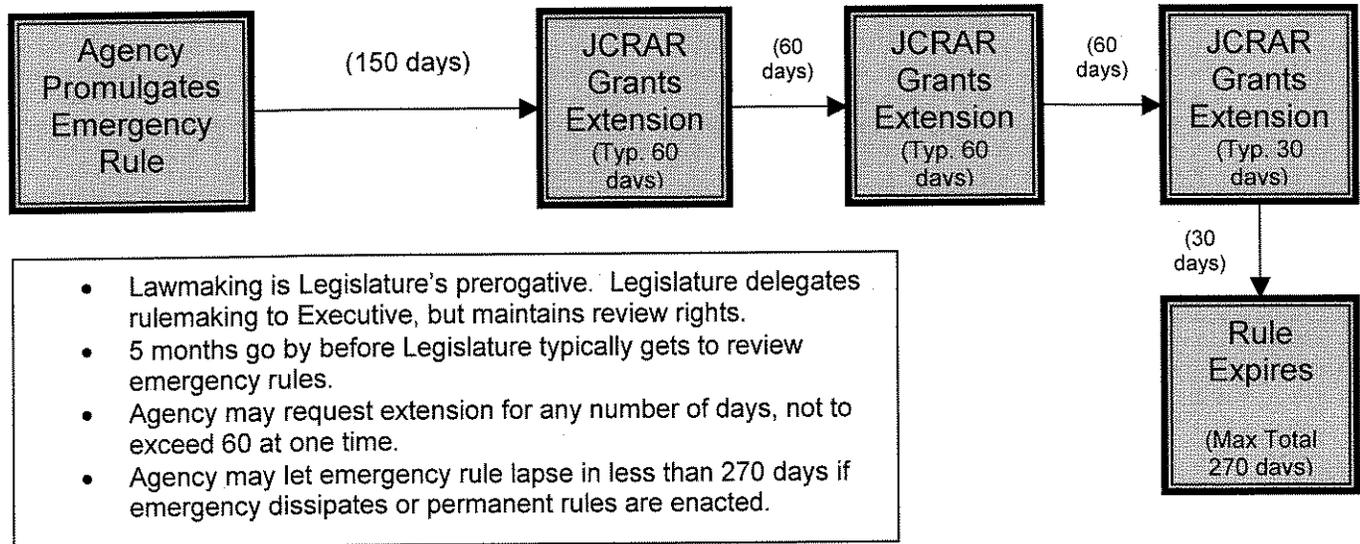
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From: Senator Tom Reynolds

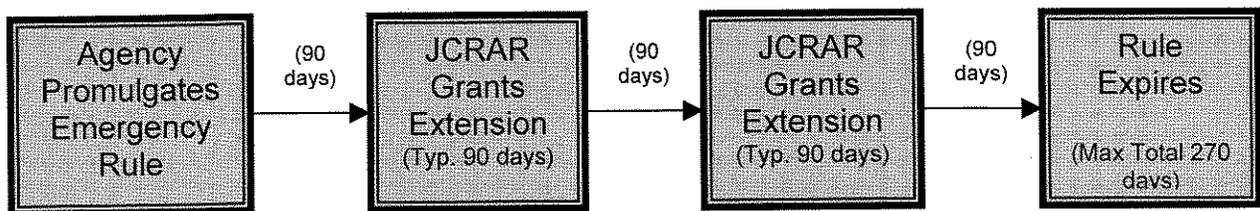
Date: October 29, 2003

Re: Assembly Bill 131 – Initial Duration of Emergency Rules

Existing Emergency Rule Process



Emergency Rule Process Under AB 131



- Emergency Rule is reviewed by JCRAR within first 90 days – improves accountability.
- Extension process is streamlined – fewer legislative meetings after initial review.
- JCRAR still makes extensions at request of promulgating agency.
- Agency may request extension for any number of days, not to exceed 90 at one time.
- Agency may let emergency rule lapse in less than 270 days if emergency dissipates or permanent rules are enacted.
- Overall duration of emergency rule is still 270 days – allows for Clearinghouse Rule to make its way through process.

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as of Monday, February 02, 2004

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Assembly Bill 131

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●	●	Wisconsin Merchants Federation	3/19/2003	?	

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