

# State of Wisconsin



2005 Senate Bill 150

Date of enactment: **March 30, 2006**

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## 2005 WISCONSIN ACT 249

**AN ACT** *to repeal* 227.114 (7); *to amend* 227.114 (5), 227.115 (2), 227.116 (4) (intro.) and (5), 227.135 (1) (e), 227.135 (2) and (3), 227.137 (2) (intro.), 227.138 (2) (intro.), 227.14 (2) (a) (intro.), 227.14 (2) (a) 4., 227.14 (2g) (intro.), 227.14 (2m) (title), 227.14 (4m), 227.15 (1m) (intro.), 227.17 (2), 227.17 (3) (d), 227.19 (2), 227.19 (3) (intro.), 227.19 (4) (b) 1. (intro.), 227.19 (4) (b) 2., 227.19 (4) (b) 6., 227.19 (4) (c), 227.19 (5) (a), 227.19 (5) (b) 1. (intro.), 227.19 (5) (b) 2., 227.19 (5) (b) 4., 227.19 (5) (e), 227.19 (5) (g) (intro.), 227.19 (6) (b), 227.20 (1), (2), and (3) (intro.), 227.21 (2) (b), 227.22 (2) (e), 227.24 (2) (am), 227.24 (2) (c), 227.25 (3), 227.26 (2) (f), 227.26 (2) (h), 227.26 (2) (j), 227.27 (2), 227.30 (1), 227.30 (3), 227.40 (2) (f) and 601.41 (3) (b); and *to create* 227.14 (2) (a) 7. and 8., 227.14 (6) (d), 227.19 (3) (g), 227.19 (3) (h), 227.19 (4) (b) 3m. and 227.26 (2) (L) of the statutes; **relating to**: making technical and minor substantive changes in the administrative rule-making process.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: On May 4, 2004, the co-chairs of the joint legislative council directed the legislative council staff to examine current laws relating to the procedures used for the promulgation of administrative rules and to develop proposed legislation that modifies current statutory language, codifies practices used in the process, coordinates statutory changes made in the 2003 session of the legislature, and makes minor substantive changes to the law.

In order to fulfill this request, the legislative council staff sought comments from rule-promulgating state agencies, the chief clerks of the legislature, and the revisor of statutes. This bill, as described in notes accompanying each SECTION, responds to many of the comments the legislative council staff received as well as to issues noted by the experience of the legislative council staff itself.

**SECTION 1.** 227.114 (5) of the statutes is amended to read:

227.114 (5) Prior to the notice required under s. 227.17 (1) (a), the agency shall notify the secretary of commerce and the small business ombudsman clearing-

house that it proposes to promulgate a rule that will have an effect on small businesses.

NOTE: Current law requires a rule-promulgating agency to notify the secretary of commerce and the small business ombudsman clearinghouse when the agency proposes to promulgate a rule that will have an effect on small businesses. This SECTION deletes the reference to the small business ombudsman clearinghouse, since the clearinghouse no longer exists.

**SECTION 2.** 227.114 (7) of the statutes is repealed.

NOTE: Current law requires each agency, for the 5-year period beginning after December 31, 1983, to review the agency's rules to reduce their impact on small businesses. This SECTION repeals the statutory provision, since it is no longer applicable.

**SECTION 3.** 227.115 (2) of the statutes is amended to read:

227.115 (2) **REPORT ON RULES AFFECTING HOUSING.** If a proposed rule directly or substantially affects the development, construction, cost, or availability of housing in this state, the department, through the division of housing, shall prepare a report on the proposed rule before it is submitted to the legislative council staff under s.

\* Section 991.11, WISCONSIN STATUTES 2003-04: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

227.15. The department may request any information from other state agencies, local governments or individuals or organizations that is reasonably necessary for the department to prepare the report. The department shall prepare the report within 30 days after the rule is submitted to the department.

NOTE: Current law requires the department of commerce, through its division of housing, to prepare a report on a proposed rule that directly or substantially affects the development, construction, cost, or availability of housing in Wisconsin. This SECTION removes the reference to the division of housing, since the department no longer has such a division.

**SECTION 4.** 227.116 (4) (intro.) and (5) of the statutes are amended to read:

227.116 (4) (intro.) If an agency fails to review and make a determination on a permit application within the time period specified in a rule or law, for each such failure the agency shall prepare a report and submit it to the ~~business development assistance center~~ department of commerce within 5 business days of the last day of the time period specified, setting forth all of the following:

(5) If an agency fails to review and make a determination on a permit application within the time period specified in a rule or law, upon completion of the review and determination for that application, the agency shall notify the ~~business development assistance center~~ department of commerce.

NOTE: Current law requires that an agency make various reports to the business development assistance center when it fails to review and make a determination on a permit application within the time specified in a rule or law. This SECTION requires that the information be delivered to the department of commerce, since the business development assistance center no longer exists.

**SECTION 5.** 227.135 (1) (e) of the statutes is amended to read:

227.135 (1) (e) A description of all of the entities that will may be affected by the rule.

NOTE: Current law requires that an agency scope statement include a description of all of the entities that will be affected by a proposed rule of the agency. This SECTION requires the scope statement to describe all of the entities that may be affected by the proposed rule, because it may be impossible for an agency to be aware of every entity that will be affected by the proposed rule.

**SECTION 6.** 227.135 (2) and (3) of the statutes are amended to read:

227.135 (2) Until the individual or body with policy-making powers over the subject matter of a proposed rule approves a statement of the scope of the proposed rule, a state employee or official may not perform any activity in connection with drafting the proposed rule except for an activity necessary to prepare the statement ~~of the scope of the proposed rule~~. The individual or body with policy-making powers may not approve a statement until at least 10 days after publication of the statement in the register as required under sub. (3). If the individual or body with policy-making powers ~~over the subject matter of a proposed rule~~ does not disapprove the statement ~~of the scope of the proposed rule~~ within 30 days after the statement is

presented to the individual or body, or by the 11th day after publication of the statement in the register, whichever is later, the statement is considered to be approved.

(3) The agency shall send the statement of the scope of a proposed rule to the revisor for publication in the register. On the same day that the agency sends the statement to the revisor, the agency shall send a copy of the statement to the secretary of administration. ~~The individual or body with policy-making powers over the subject matter of a proposed rule may not take action on a statement of the scope of the proposed rule until at least 10 days after publication of the statement in the register.~~

NOTE: Current law states that if an individual or body with policy-making powers does not disapprove a scope statement within 30 days after the statement is presented to that individual or body, the statement is considered to be approved and work may begin on drafting the proposed rule. However, current law also states that the individual or body may not take action on a scope statement until at least 10 days after publication of the statement in the Wisconsin administrative register. Since the latter date may occur more than 30 days after the scope statement is presented to the individual or body, this SECTION provides that if the individual or body does not disapprove the scope statement within 30 days after the statement is presented to the individual or body, or by the 11th day after publication of the statement in the register, whichever is later, the statement is considered to be approved.

**SECTION 7.** 227.137 (2) (intro.) of the statutes is amended to read:

227.137 (2) (intro.) 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~~ legislature for review under s. 227.19 (2), a municipality, an association that represents a farm, labor, business, or professional group, or 5 or more persons that would be directly and uniquely affected by the proposed rule may submit a petition to the department of administration asking that the secretary of administration direct the agency to prepare an economic impact report for the proposed rule. The agency shall prepare an economic impact report before submitting the proposed rule to the ~~legislative council staff under s. 227.15~~ legislature for review under s. 227.19 (2) if the secretary of administration directs the agency to prepare that report. The secretary of administration may 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~~ legislature for review under s. 227.19 (2). 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~~ legislature for review under s. 227.19 (2) if the secretary determines that all of the following apply:

NOTE: Current law provides that a request for an economic impact report may be made with respect to a proposed rule offered by the departments of agriculture, trade and consumer protection; commerce; natural resources; transportation; or workforce development. If a report is requested, the

report must be prepared before the agency submits the proposed rule to the legislative council staff for review. In order to abide by this requirement, an affected agency must allow the period for making the request to expire. A request for the economic impact report must be submitted to the department of administration no later than 90 days after the publication of the scope statement or no later than 10 days after publication of the notice for a public hearing regarding the proposed rule, whichever is earlier. SECTIONS 7 and 8 allow an agency to submit a proposed rule to the legislative council staff prior to the preparation of an economic impact report. Although, under current law, both the department of administration and the legislative council staff will review such a rule for the statutory authority of the agency to promulgate it, the reports of each body are fundamentally different; the economic impact report focuses on the economic effects of the proposed rule, while the legislative council staff report is concerned with the clarity of the proposed rule and editorial matters. There is no need to delay the rule-making process with respect to rules that will never be the subject of a request for an economic impact report. When such a report is requested, the preparation of the legislative council staff report should have no impact on the department's independent review of the proposed rule. Under this SECTION, an agency that is directed to prepare an economic impact report must finalize the report before the proposed rule is submitted to the legislature for review under s. 227.19 (2), stats.

**SECTION 8.** 227.138 (2) (intro.) of the statutes is amended to read:

227.138 (2) (intro.) If an economic impact report will be prepared under s. 227.137 (2) regarding a proposed rule, the department shall review the proposed rule and issue a report. The agency shall not submit a proposed rule to the legislative council staff for review under s. 227.15 (1) legislature for review under s. 227.19 (2) until the agency receives a copy of the department's report and the approval of the secretary of administration. The report shall include all of the following findings:

NOTE: See Note to SECTION 7.

**SECTION 9.** 227.14 (2) (a) (intro.) of the statutes is amended to read:

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

NOTE: Current law requires an agency to prepare an analysis of each proposed rule. The analysis must be printed with the proposed rule when it is published or distributed. Some agencies have interpreted this requirement to mean that the analysis must be printed both as a separate document attached to the proposed rule and as part of the preface to the proposed rule. This SECTION clarifies that double publication is not required; the analysis need be published only once as a preface to the text of the proposed rule.

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

227.14 (2) (a) 4. A comparison of with similar rules in adjacent states Illinois, Iowa, Michigan, and Minnesota.

NOTE: Current law requires that an agency prepare a plain language analysis of a proposed rule. One of the items that must be included is a comparison with similar rules in adja-

cent states. This SECTION specifically names the 4 adjacent states.

**SECTION 11.** 227.14 (2) (a) 7. and 8. of the statutes are created to read:

227.14 (2) (a) 7. The electronic mail address and telephone number of an agency contact person for the proposed rule.

8. The place where comments on the proposed rule should be submitted and the deadline for submitting those comments, if the deadline is known at the time the proposed rule is submitted to the legislative council staff under s. 227.15.

NOTE: Section 227.15 (1m), stats., requires the legislative council staff to create and maintain an Internet site that includes a copy of each proposed rule it receives. Among the information that is required to be included on the site is the electronic mail address and a telephone number of an agency contact person for each proposed rule and a place where comments on the proposed rule should be submitted and a deadline for submitting those comments. This SECTION requires an agency to place in its rule analysis: (1) the electronic mail address and telephone number of an agency contact person for the proposed rule; and (2) the place where the comments on the proposed rule should be submitted and the deadline for submitting those comments, if the deadline is known at the time the proposed rule is submitted to the legislative council staff. This information then will be placed on the Internet site when the entire rule is posted there by the legislative council staff.

**SECTION 12.** 227.14 (2g) (intro.) of the statutes is amended to read:

227.14 (2g) (title) FISCAL EFFECT OF RULE REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. On the same day that an agency publishes a proposed rule under this section submits to the legislative council staff under s. 227.15 a proposed rule that may have a significant economic impact on small businesses, the agency shall submit the proposed rule ~~and~~, the analysis required under sub. (2), and a description of its actions taken to comply with s. 227.114 (2) and (3) to the small business regulatory review board. The board may use cost-benefit analysis to determine the fiscal effect of the rule on small businesses and shall determine whether the agency has complied with subs. (2) and (2m) and s. 227.114 (2) and (3). Except as provided in subs. (1m) and (1s), each proposed rule shall include provisions detailing how the rule will be enforced. If the board determines that the rule does not include an enforcement provision or that the agency failed to comply with sub. (2) or (2m) or s. 227.114 (2) or (3), the board shall notify the agency of that determination and ask the agency to comply with any of those requirements. In addition, the board may submit suggested changes in the proposed rule to the agency, including proposals to reduce the use of cross-references in the rule. The board shall send a report of those suggestions and of any notice of failure to include enforcement provisions or to comply with sub. (2) or (2m) or s. 227.114 (2) or (3) to the legislative council staff. The

notification to the agency may include a request that the agency do any of the following:

NOTE: Current law requires an agency to submit a proposed rule to the small business regulatory review board on the same day that it publishes a proposed rule that may have a significant economic impact on small businesses. Agencies have found the reference to publication confusing. This SECTION provides that an agency proposing a rule that may have a significant economic impact on small businesses must submit the rule to the small business regulatory review board on the same day that it submits the proposed rule to the legislative council staff for review under s. 227.15, stats. In addition, the statute is amended to require the agency to describe how it has attempted to reduce the impact of the proposed rule on small businesses as mandated under s. 227.114 (2) and (3), stats. Finally, the title to s. 227.14 (2g), stats., is amended to more accurately reflect its content.

**SECTION 13m.** 227.14 (2m) (title) of the statutes is amended to read:

227.14 (2m) (title) QUALITY OF AGENCY DATA AND REDUCTION OF CROSS REFERENCES.

**SECTION 14.** 227.14 (4m) of the statutes is amended to read:

227.14 (4m) NOTICE OF SUBMITTAL TO JOINT LEGISLATIVE COUNCIL STAFF. On the same day that an agency submits a proposed rule to the joint legislative council staff under s. 227.15, the agency shall prepare a written notice of the agency's submittal to the joint legislative council staff. The notice shall include a statement of the date on which the proposed rule has been submitted to the joint legislative council staff for review, of the subject matter of the proposed rule and of whether a public hearing on the proposed rule is required, and shall identify the organizational unit within the agency that is primarily responsible for the promulgation of the rule. The notice shall be approved by the individual or body with policy-making powers over the subject matter of the proposed rule. The agency shall send the notice to the revisor for publication in the register. On the same day that the agency sends the notice to the revisor, the agency shall send a copy of the notice to the secretary of administration.

NOTE: This SECTION make references to the legislative council staff consistent with references in the rest of ch. 227, stats.

**SECTION 15.** 227.14 (6) (d) of the statutes is created to read:

227.14 (6) (d) If a proposed rule is withdrawn, the proposed rule may be promulgated only by commencing the rule-making procedure again with the preparation, under s. 227.135, of a statement of the scope of the proposed rule that the agency plans to promulgate.

NOTE: This SECTION clarifies that when a proposed rule is withdrawn from the promulgation process in accordance with s. 227.14 (6), stats., the proposed rule may be promulgated only by commencing the rule-making procedure again, beginning with the preparation of a scope statement under s. 227.135, stats.

**SECTION 16.** 227.15 (1m) (intro.) of the statutes is amended to read:

227.15 (1m) INTERNET ACCESS TO PROPOSED RULE. (intro.) The joint legislative council staff shall create and maintain an Internet site that includes a copy of or link to each proposed rule received under sub. (1) in a format that allows ~~the site to be searched~~ searching using keywords. Each agency shall provide the joint legislative council staff with the proposed rules and other information needed to comply with this subsection in the format required by the joint legislative council staff. The Internet site shall ~~include a section devoted to identify or provide a link to a site that identifies~~ identify or provide a link to a site that identifies proposed rules affecting small businesses, as defined in s. 227.114 (1). The Internet site shall also include or provide a link to all of the following:

NOTE: Current law requires the joint legislative council to create and maintain an Internet site that includes certain information about proposed administrative rules. This SECTION allows the required information to be provided by a link on the site created and maintained by the legislative council staff. This SECTION also makes references to the legislative council staff consistent with references in the rest of ch. 227, stats.

**SECTION 17.** 227.17 (2) of the statutes is amended to read:

227.17 (2) The notice under sub. (1) shall be given at least 10 days prior to the date set for a hearing. Notice through the register is considered to have been given on the ~~first or 15th day of the month following publication effective date of the issue of the register in which the notice first appears.~~ or, if applicable, on the date prescribed under s. 227.22 (4).

NOTE: Current law requires an agency to give notice of a public hearing on a proposed rule through the Wisconsin administrative register. Notice is considered to have been given on the first or 15th day of the month following publication of the register. If a notice were published on February 1, 2006, the statute could be interpreted to mean that the notice becomes effective on the following February 15, March 1, or March 15. In order to clarify the statutes and reduce possible delays, this SECTION provides that the notice generally will be considered to have been given on the effective date of the issue of the Wisconsin administrative register in which the notice first appears. Each issue of the register states its effective date.

**SECTION 18.** 227.17 (3) (d) of the statutes is amended to read:

227.17 (3) (d) An analysis of the proposed rule as required under s. 227.14 (2).

NOTE: Current law requires that an agency notice of a public hearing on a proposed rule must include an analysis of the proposed rule. This SECTION clarifies that the analysis must include all of the items required under s. 227.14 (2), stats. This analysis is the same analysis that accompanies a proposed rule when it is submitted to the legislative council staff for review under s. 227.15, stats.

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

227.19 (2) NOTIFICATION OF LEGISLATURE. An agency shall submit a notice to the ~~presiding officer~~ chief clerk of each house of the legislature when a proposed rule is

in final draft form. The notice shall be submitted in triplicate and shall be accompanied by a report in the form specified under sub. (3). A notice received under this subsection on or after September 1 of an even-numbered year shall be considered received on the first day of the next regular session of the legislature. ~~Each~~ The ~~presiding officer of each house of the legislature shall,~~ within 7 10 working days following the day on which the notice and report are received, direct the appropriate chief clerk to refer them to one committee, which may be either a standing committee or a joint legislative committee created by law, except the joint committee for review of administrative rules. The agency shall submit to the revisor for publication in the register a statement that a proposed rule has been submitted to the ~~presiding officer chief clerk~~ of each house of the legislature. Each ~~presiding officer~~ chief clerk shall enter a similar statement in the journal of his or her house.

NOTE: Current law requires an agency to submit a notice to the presiding officer of each house of the legislature when a proposed rule is in final draft form. The presiding officer must, within 7 working days, refer the rule to a committee, which may be either a standing committee or a joint legislative committee created by law, except the joint committee for review of administrative rules. This SECTION requires that the agency submit the notice to the chief clerk of each house of the legislature for internal processing and that the referral as directed by the presiding officers must be accomplished within 10 working days. Notice to the chief clerks is in accord with the process for notifying the legislature of various actions under s. 13.172, stats. This SECTION also provides that referral of a proposed rule may be made only to a standing committee.

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

227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be in writing and shall include the proposed rule in the form specified in s. 227.14 (1), the material specified in s. 227.14 (2) to (4), a copy of any economic impact report prepared by the agency under s. 227.137, a copy of any report prepared by the department of administration under s. 227.138, a copy of any energy impact report received from the public service commission under s. 227.117 (2), and a copy of any recommendations of the legislative council staff, ~~and an analysis.~~ The analysis report shall also include all of the following:

NOTE: This SECTION clarifies that an agency report to the legislature, rather than a rule analysis, must contain specified items.

**SECTION 21.** 227.19 (3) (g) of the statutes is created to read:

227.19 (3) (g) The report of the department of commerce, as required by s. 227.115, if a proposed rule directly or substantially affects the development, construction, cost, or availability of housing in this state.

NOTE: Current law requires the department of commerce to prepare a report on a proposed rule if the proposed rule directly or substantially affects the development, construction, cost, or availability of housing in Wisconsin. This SEC-

TION requires that the report be included in the submission of a proposed rule to the legislature.

**SECTION 22.** 227.19 (3) (h) of the statutes is created to read:

227.19 (3) (h) A response to any report prepared by the small business regulatory review board under s. 227.14 (2g).

NOTE: Current law provides that the small business regulatory review board, when reviewing a proposed rule that may have a significant economic impact on small businesses, must notify the agency if it determines that the proposed rule does not include an enforcement provision or that the agency failed to comply with certain statutory requirements. In addition, the small business regulatory review board may submit suggested changes in the proposed rule to the agency. This SECTION requires that when an agency submits a proposed rule to the legislature for review, it must include its response to a report prepared by the small business regulatory review board.

**SECTION 23.** 227.19 (4) (b) 1. (intro.) of the statutes is amended to read:

227.19 (4) (b) 1. (intro.) Except as provided under subd. 5., the committee review period for each committee extends for 30 days after referral under sub. (2). If the chairperson or the cochairpersons of a committee take either of the following actions within the 30-day period, the committee review period for that committee is continued for 30 days from the date on which the first action is taken ~~30-day review period would have expired~~:

NOTE: Current law provides that a committee of the legislature has 30 days within which to review a proposed rule. This period may be extended if, within the 30-day period, the committee requests in writing that the agency meet with the committee or the committee publishes or posts notice that it will hold a meeting or hearing regarding the proposed rule. If the committee takes either of these actions, an additional 30-day review period begins from the date the action is taken. For example, if a notice of hearing is published on the 15th day of the initial 30-day review period, the entire review period will extend to a total of 45 days. If the notice is published on the 30th day of the review period, the full review period will extend to a total of 60 days. This SECTION provides that if a committee requests a meeting or publishes a notice, the review period for the committee will be 60 days, regardless of when the request or publication took place in the first 30-day review period.

**SECTION 24.** 227.19 (4) (b) 2. of the statutes is amended to read:

227.19 (4) (b) 2. If a committee, by a majority vote of a quorum of the committee, ~~recommends~~ requests modifications in a proposed rule, and the agency, in writing, agrees to ~~make~~ consider making modifications, the review period for both committees is extended either to the 10th working day following receipt by the committees of the modified proposed rule or a written statement to the committee that the agency will not make modifications or to the expiration of the review period under subd. 1., whichever is later. There is no limit either on the number of modification agreements that may be entered into or on the time within which modifications may be made.

NOTE: Current law provides that a committee reviewing a proposed rule may enter into a modification agreement with

an agency if the committee requests modifications in a proposed rule, and the agency, in writing, agrees to make modifications. In practice, a committee often asks an agency to consider modifications that the agency will take under advisement. If the agency agrees to do so, the time period for review of a proposed rule is tolled until the agency responds with drafted amendments or a statement that it will not make modifications. This SECTION amends the statute in accordance with current practice; a committee may request modifications in a proposed rule and the agency, in writing, may agree to consider making modifications. The review period will be tolled until the agency submits either the modified proposed rule or a written statement that it will not make modifications.

**SECTION 25.** 227.19 (4) (b) 3m. of the statutes is created to read:

227.19 (4) (b) 3m. An agency may, during the committee review period, reconsider its action by recalling the proposed rule from the chief clerk of each house of the legislature. If the agency decides to continue the rule-making process with regard to the proposed rule, it shall resubmit the proposed rule, either in its recalled form or with one or more germane modifications, to the chief clerk in each house of the legislature as provided in sub. (2) and the committee review period under subd. 1. shall begin again.

NOTE: Current law requires that if an agency withdraws a proposed rule from the review process, it may not promulgate the proposed rule unless it begins the process again with the filing of a new scope statement. This SECTION creates a less onerous provision by authorizing an agency, during the committee review period, to reconsider the proposed rule by recalling it from the chief clerk of each house of the legislature. If the agency decides to continue the rule-making process with regard to the proposed rule, it must resubmit the proposed rule, either in its recalled form or with one or more germane modifications, to the chief clerk in each house of the legislature for the commencement of a new committee review period.

**SECTION 26.** 227.19 (4) (b) 6. of the statutes is amended to read:

227.19 (4) (b) 6. If a committee has not concluded its jurisdiction over a proposed rule before the day specified under s. 13.02 (1) for the next legislature to convene, that jurisdiction immediately ceases and, within ~~7~~ 10 working days after that date, the presiding officer of the appropriate house shall refer the proposed rule to the appropriate standing committee ~~or joint legislative committee created by law, except the joint committee for review of administrative rules~~, as provided under sub. (2). The committee review period that was interrupted by the loss of jurisdiction under this subdivision continues for the committee to which the proposed rule is referred under this subdivision beginning on the date of referral under this subdivision.

NOTE: Current law provides that when the committee period for review of a proposed rule is interrupted by the convening of a new legislature, the review period ceases and the presiding officer of each house must refer the proposed rule, within 7 working days of the convening of the new legislature, to a standing committee or joint legislative committee, except the joint committee for review of administrative rules. This SECTION provides, following the amendment in SECTION 19,

that the referral process must be accomplished within 10 working days and that referral of a proposed rule may be made only to a standing committee.

**SECTION 27.** 227.19 (4) (c) of the statutes is amended to read:

227.19 (4) (c) *Agency not to promulgate rule during committee review.* An agency may not promulgate a proposed rule during the committee review period unless both committees waive jurisdiction over the proposed rule prior to the expiration of the review period. A committee may waive its jurisdiction by adopting, by a majority vote of a quorum of the committee, a motion waiving the committee's jurisdiction. ~~The committee shall report its action in writing to the joint committee for review of administrative rules within 2 working days after the waiver action.~~

NOTE: Under current law, if a committee reviewing a proposed rule waives its jurisdiction over the rule, it must report this action in writing to the joint committee for review of administrative rules within 2 working days after the waiver action. This SECTION eliminates the reporting requirement.

**SECTION 28.** 227.19 (5) (a) of the statutes is amended to read:

227.19 (5) (a) *Referral.* If a committee objects to a proposed rule, the committee shall report the proposed rule and the objection to the ~~presiding officer~~ chief clerk of the appropriate house within ~~2~~ 5 working days after making the objection. The ~~presiding officer~~ chief clerk shall refer the proposed rule and the objection to the joint committee for review of administrative rules within 5 working days after receiving the committee report.

NOTE: Current law provides that if a committee objects to a proposed rule, the committee must report the proposed rule and the objection to the presiding officer of the appropriate house within 2 working days after making the objection. The presiding officer then refers the proposed rule and the objection to the joint committee for review of administrative rules within 5 working days after receiving the committee report. This SECTION provides that the report and the objection must be sent to the chief clerk of the appropriate house within 5 working days after making the objection. The chief clerk then will refer the proposed rule and the objection to the joint committee for review of administrative rules within 5 working days after receiving the committee report. This SECTION reflects methods of internal processing within the legislature and standardizes the reporting and referral periods.

**SECTION 29.** 227.19 (5) (b) 1. (intro.) of the statutes is amended to read:

227.19 (5) (b) 1. (intro.) The review period for the joint committee for review of administrative rules extends for 30 days after a proposed rule and objection are referred to it. The joint committee for review of administrative rules shall meet and take action in executive session during that period, except that if the cochairpersons take either of the following actions within the 30-day period, the joint committee review period is continued for 30 days from the date on which the first action is taken ~~30-day review period would have expired~~:

NOTE: See the Note to SECTION 23 for a description of how the joint committee for review of administrative rules

may extend its period of review over a proposed rule that has received an objection.

**SECTION 30.** 227.19 (5) (b) 2. of the statutes is amended to read:

227.19 (5) (b) 2. If the joint committee for review of administrative rules, by a majority vote of a quorum of the committee, ~~recommends~~ requests modifications in a proposed rule, and the agency, in writing, agrees to ~~make consider making~~ modifications, the review period for the joint committee for review of administrative rules is extended either to the 10th working day following receipt by the joint committee of the modified proposed rule or a written statement to the joint committee that the agency will not make modifications or to the expiration of the review period under subd. 1., whichever is later. There is no limit either on the number of modification agreements that may be entered into or on the time within which modifications may be made.

NOTE: See the Note to SECTION 24 for a description of how the joint committee for review of administrative rules may enter into a modification agreement with an agency that has submitted a proposed rule that has received an objection.

**SECTION 31.** 227.19 (5) (b) 4. of the statutes is amended to read:

227.19 (5) (b) 4. If the joint committee for review of administrative rules has not concluded its jurisdiction over a proposed rule before the day specified under s. 13.02 (1) for the next legislature to convene, that jurisdiction immediately ceases and, within ~~7~~ 10 working days after that date, the presiding officer of the appropriate house shall refer the proposed rule to the joint committee for review of administrative rules. The committee review period that was interrupted by the loss of jurisdiction under this subdivision continues for the joint committee for review of administrative rules to which the proposed rule is referred under this subdivision beginning on the date of referral under this subdivision.

NOTE: Current law provides that if the joint committee for review of administrative rules has not concluded its jurisdiction over a proposed rule before the day a new legislature convenes, the joint committee's jurisdiction immediately ceases and, within 7 working days after that date, the presiding officer of the appropriate house must refer the proposed rule again to the joint committee for review of administrative rules. This SECTION amends the statute to provide that the presiding officer must make this referral within 10 working days after the new legislature convenes.

**SECTION 32.** 227.19 (5) (e) of the statutes is amended to read:

227.19 (5) (e) *Bills to prevent promulgation.* When the joint committee for review of administrative rules objects to a proposed rule it shall, within 30 days of the date of the objection, ~~introduce in each house of the legislature, for consideration at any regular session, a bill to support the objection.~~ Within 10 working days after introduction, the presiding officer of each house of the legislature shall refer the bill to the appropriate standing committee meet and take executive action regarding the introduction, in each house of the legislature, of a bill to

support the objection. The joint committee shall introduce the bills within 5 working days after taking executive action in favor of introduction of the bills unless the bills cannot be introduced during this time period under the joint rules of the legislature.

NOTE: Current law provides that when the joint committee for review of administrative rules objects to a proposed rule, it must, within 30 days of the date of the objection, introduce in each house of the legislature a bill to support the objection. This SECTION provides that the joint committee, following an objection, must, within 30 days of the date of the objection, meet and take executive action regarding the introduction of a bill to support the objection. The joint committee must introduce the bills within 5 working days after taking executive action in favor of introduction of the bills.

**SECTION 33.** 227.19 (5) (g) (intro.) of the statutes is amended to read:

227.19 (5) (g) (intro.) If the bills required under par. (e) are introduced on or after February 1 of an even-numbered year and before the next regular session of the legislature commences, as provided under s. 13.02 (2), or if the bills cannot be introduced during this time period under the joint rules of the legislature, the joint committee for review of administrative rules shall reintroduce ~~reintroduce~~ introduce the bills on the first day of the next regular session of the legislature, unless either house adversely disposes of either bill. If the joint committee for review of administrative rules is required to ~~reintroduce~~ introduce the bills, the agency may not promulgate the proposed rule to which the bills pertain except as provided in par. (f). If either house adversely disposes of either bill, the agency may promulgate the proposed rule that was objected to. In this paragraph, "adversely disposes of" means that one house has voted in one of the following ways:

NOTE: Current law provides that if the joint committee for review of administrative rules introduces objection-sustaining legislation on or after February 1 of an even-numbered year and before the next regular session of the legislature commences, the joint committee for review of administrative rules must introduce the bills on the next day of the regular session, unless either house adversely disposes of either bill in the current session. This SECTION clarifies that the introduction requirement also applies if the bills cannot be introduced by the joint committee on or after February 1 of an even-numbered year under the joint rules of the legislature.

**SECTION 34.** 227.19 (6) (b) of the statutes is amended to read:

227.19 (6) (b) Upon introduction of the bills under sub. (5), the presiding officer of each house of the legislature shall refer the bill introduced in that house to the appropriate committee, to the calendar scheduling committee or directly to the calendar. If the committee to which a bill is referred makes no report within 30 days after referral, the bill shall be considered reported without recommendation. No later than 40 days after referral, or as soon thereafter as is possible if the legislature is not in a floor period 40 days after referral, the bills shall be placed on the calendar of each house of the legislature according to its rule governing the placement of propos-

als on the calendar. A bill introduced under this section which is received in the 2nd house shall be referred, reported and placed on the calendar in the same manner as an original bill introduced under this section.

NOTE: Current law provides that when objection-sustaining legislation is introduced, a bill must be placed on the calendar of each house of the legislature no later than 40 days after referral. This SECTION provides that the bills must be placed on the calendar no later than 40 days after referral or as soon thereafter if the legislature is not in a floorperiod 40 days after referral. This change will accommodate periods of recess in the legislative schedule.

**SECTION 35.** 227.20 (1), (2), and (3) (intro.) of the statutes are amended to read:

227.20 (1) An agency shall file a certified copy of each rule it promulgates ~~in the office of the secretary of state and in the office of the revisor.~~ No rule is valid until the certified copies have copy has been filed. A certified copy shall be typed or duplicated on 8 1/2 by 11 inch paper, leaving sufficient room for the ~~secretary of state's revisor's~~ stamp at the top of the first page. Forms that are filed need not comply with the specifications of this subsection.

(2) The ~~secretary of state~~ revisor shall endorse the date and the time of filing on each certified copy filed under sub. (1). The ~~secretary of state~~ revisor shall keep a file of all certified copies filed under sub. (1).

(3) (intro.) Filing a certified copy of a rule with the ~~secretary of state~~ revisor creates a presumption of all of the following:

NOTE: Current law requires agencies to file a certified copy of each rule that is promulgated with 2 state officials—the secretary of state and the revisor of statutes. This SECTION eliminates the need to file a copy with the secretary of state.

**SECTION 36.** 227.21 (2) (b) of the statutes is amended to read:

227.21 (2) (b) The ~~revisor and the attorney general~~ shall consent to incorporation by reference only in a rule of limited public interest and in a case where the incorporated standards are readily available in published form or are available on optical disk or in another electronic format. Each rule containing an incorporation by reference shall state how the material incorporated may be obtained and, except as provided in s. 601.41 (3) (b), that the standards are on file at the offices of the agency, ~~the secretary of state,~~ and the revisor.

NOTE: Current law provides that if an agency incorporates standards into a rule by reference rather than replicating the entire standard in the text of the rule, it must ensure that the referenced standards are on file at the offices of the agency, the secretary of state, and the revisor of statutes. This SECTION eliminates the need to ensure that the standards are on file with the secretary of state. In addition, this SECTION allows the standards to be in a format other than a paper copy.

Current law also requires that the agency receive the consent of the revisor of statutes and the attorney general in order to incorporate the standard by reference. This SECTION eliminates the requirement for the agency to receive the consent of the revisor.

**SECTION 37.** 227.22 (2) (e) of the statutes is amended to read:

227.22 (2) (e) The rule has a significant economic impact on small businesses, as defined in s. 227.114 (1), in which case the rule applies to small businesses ~~on~~ no earlier than the first day of the 3rd month commencing after the date of publication of the rule.

NOTE: Current law states that if a proposed rule has a significant economic impact of small businesses, the rule takes effect on the first day of the 3rd month after the date of publication of the rule. This SECTION specifies that the delay is required only if the impact is adverse. This allows a rule that has a significant economic impact that is beneficial to small businesses to take effect sooner. In addition, this SECTION specifies that the adverse proposed rule may take effect “no earlier than” the first day of the 3rd month after publication.

**SECTION 38.** 227.24 (2) (am) of the statutes is amended to read:

227.24 (2) (am) Any request by an agency to extend the effective period of the emergency rule or part of the emergency rule ~~must~~ shall be made in writing to the joint committee for review of administrative rules no later than 30 days before the initial expiration date of the emergency rule. ~~At the time that the agency submits the written request to the joint committee for review of administrative rules, the agency shall submit a copy of the written request to the presiding officer of each house of the legislature and to the appropriate committees of each house of the legislature, as determined by the presiding officer of each house of the legislature. The presiding officer of each house of the legislature shall enter a statement in the journal of his or her house that the agency has submitted a request to extend the effective period of the emergency rule or part of the emergency rule. This paragraph shall not apply to any subsequent request by the agency to extend the same emergency rule or part of the emergency rule.~~

NOTE: Current law provides that an agency may request the extension of the effective period of an emergency rule. When it does so, the agency must submit a copy of its written request for the extension to the presiding officer of each house of the legislature and to the appropriate committees of each house of the legislature. Similarly, when the joint committee for review of administrative rules extends the effective period of an emergency rule, it must file a statement about the action with various offices, including the presiding officer of each house of the legislature, the appropriate committees of each house of the legislature, and the secretary of state. The submission of these requests and statements will be noted in the journals of the legislature. SECTIONS 38 and 39 eliminate notice to the presiding officers, the standing committees, and the secretary of state and, consequently eliminate the need to record these actions in the journals of the legislature.

**SECTION 39.** 227.24 (2) (c) of the statutes is amended to read:

227.24 (2) (c) Whenever the committee extends an emergency rule or part of an emergency rule under par. (a), it shall file a statement of its action with the agency promulgating the emergency rule, ~~the presiding officer of each house of the legislature, the appropriate committees of each house of the legislature, as determined by the presiding officer of each house of the legislature, the secretary of state and the revisor of statutes.~~ The statement

shall identify the specific emergency rule or part of an emergency rule to which it relates. ~~The presiding officer of each house of the legislature shall enter a statement in the journal of his or her house that the emergency rule or part of the emergency rule has been extended.~~

NOTE: See the Note to SECTION 38.

**SECTION 41.** 227.25 (3) of the statutes is amended to read:

227.25 (3) An agency may request an advance commitment as to the title or numbering of a proposed rule by submitting a copy of the proposed rule indicating the requested title and numbering to the revisor prior to filing. As soon as possible after that, the revisor shall either approve the request or inform the agency of any change necessary to preserve uniformity in the code. ~~If the title or numbering of a rule is revised, the revisor shall verify that a certified copy of the revised version has been filed with the secretary of state.~~

NOTE: Current law provides that if the numbering of a rule is revised, the revisor must verify that a certified copy of the revised version has been filed with the secretary of state. This SECTION eliminates this requirement, since, in accordance with the amendments in SECTION 35, certified copies of rules no longer will be deposited with the secretary of state.

**SECTION 42.** 227.26 (2) (f) of the statutes is amended to read:

227.26 (2) (f) *Introduction of bills.* If any rule is suspended, the committee shall, within 30 days after the suspension, ~~introduce in each house of the legislature, for consideration at any regular session, a bill to repeal the suspended rule~~ meet and take executive action regarding the introduction, in each house of the legislature, of a bill to support the suspension. The committee shall introduce the bills within 5 working days after taking executive action in favor of introduction of the bills unless the bills cannot be introduced during this time period under the joint rules of the legislature.

NOTE: Current law provides that when the joint committee for review of administrative rules suspends an existing rule, it must, within 30 days of the date of the suspension, introduce in each house of the legislature a bill to support the suspension. This SECTION provides that the joint committee, following a suspension, must, within 30 days of the date of the suspension, meet and take executive action regarding the introduction of a bill to support the suspension. The joint committee must introduce the bills within 5 working days after taking executive action in favor of introduction of the bills.

**SECTION 43.** 227.26 (2) (h) of the statutes is amended to read:

227.26 (2) (h) *Legislative procedure.* Upon the introduction of bills by the committee under this subsection, the presiding officer of each house of the legislature shall refer the bill introduced in that house to the appropriate committee, to the calendar scheduling committee or directly to the calendar. If the committee to which a bill is referred makes no report within 30 days after referral, the bill shall be considered reported without recommendation. No later than 40 days after referral, or as soon

thereafter as is possible if the legislature is not in a floor-period 40 days after referral, the bills shall be placed on the calendar of each house of the legislature according to its rule governing the placement of proposals on the calendar. A bill introduced under this subsection which is received in the 2nd house shall be referred, reported and placed on the calendar in the same manner as an original bill introduced under this subsection.

NOTE: Current law provides that when suspension-sustaining legislation is introduced, a bill must be placed on the calendar of each house of the legislature no later than 40 days after referral. This SECTION provides that the bills must be placed on the calendars no later than 40 days after referral or as soon thereafter if the legislature is not in a floorperiod 40 days after referral. This change will accommodate periods of recess in the legislative schedule.

**SECTION 44.** 227.26 (2) (j) of the statutes is amended to read:

227.26 (2) (j) *Late introduction of bills; effect.* If the bills required under par. (f) are introduced on or after February 1 of an even-numbered year and before the next regular session of the legislature commences, as provided under s. 13.02 (2), or if the bills cannot be introduced during this time period under the joint rules of the legislature, unless either house adversely disposes of either bill, the committee shall ~~reintroduce~~ introduce the bills on the first day of the next regular session of the legislature. If the committee is required to ~~reintroduce~~ introduce the bills on the first day of the next regular session, the rule to which the bills pertain remains suspended except as provided in par. (i). If either house adversely disposes of either bill, the rule remains in effect and the committee may not suspend it again. In this paragraph, “adversely disposes of” has the meaning given under s. 227.19 (5) (g).

NOTE: Current law provides that if the joint committee for review of administrative rules introduces suspension-sustaining legislation on or after February 1 of an even-numbered year and before the next regular session of the legislature commences, the joint committee must introduce the bills on the next day of the regular session, unless either house adversely disposes of either bill in the current session. This SECTION clarifies that the introduction requirement also applies if the bills cannot be introduced by the joint committee on or after February 1 of an even-numbered year under the joint rules of the legislature.

**SECTION 45.** 227.26 (2) (L) of the statutes is created to read:

227.26 (2) (L) *Emergency rules.* If the committee suspends an emergency rule under this section, the agency may not submit to the legislature under s. 227.19 (2) the substance of the emergency rule as a proposed permanent rule during the time the emergency rule is suspended.

NOTE: Current law permits the joint committee for review of administrative rules to suspend a rule, including an emergency rule. This SECTION codifies current practice by stating that if the committee suspends an emergency rule, the agency may not promulgate the substance of the emergency

rule as a proposed permanent rule during the time the emergency rule is suspended.

**SECTION 46.** 227.27 (2) of the statutes is amended to read:

227.27 (2) The code shall be prima facie evidence in all courts and proceedings as provided by s. 889.01, but this does not preclude reference to or, in case of a discrepancy, control over a rule filed with the revisor ~~and~~ or the secretary of state, and the certified copy of a rule shall also and in the same degree be prima facie evidence in all courts and proceedings.

NOTE: This SECTION amends a reference to a rule filed with the revisor and the secretary of state by instead referring to a rule filed with the revisor or the secretary of state. The change is necessitated by the amendments in SECTION 35 that provide that certified copies of rules no longer will be deposited with the secretary of state.

**SECTION 47.** 227.30 (1) of the statutes is amended to read:

227.30 (1) The small business regulatory review board may review the rules and guidelines of any state agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1), to conduct their affairs. If the board determines that a rule or guideline places an unnecessary burden on the ability of a small business to conduct its affairs, the board shall submit a report and recommendations regarding the rule or guideline to the joint committee for review of administrative rules and to the agency.

NOTE: Current law provides that the small business regulatory review board may review rules and guidelines of an agency to determine whether an unnecessary burden is placed on the ability of small businesses to conduct their affairs. If a burden is found, the board must submit a report and recommendations to the joint committee for review of administrative rules. This SECTION provides that the report also must be submitted to the agency whose rules and guidelines have been reviewed.

**SECTION 48.** 227.30 (3) of the statutes is amended to read:

227.30 (3) The joint committee for review of administrative rules may refer the report regarding the rule or

guideline to the presiding officer of each house of the legislature for referral to a committee under s. 227.19 (2) or may review the rule or guideline as provided under s. ~~227.19 (5)~~ 227.26.

NOTE: This SECTION corrects a cross-reference.

**SECTION 49.** 227.40 (2) (f) of the statutes is amended to read:

227.40 (2) (f) Proceedings under s. 227.114 (6m) ~~or 227.14 (2g).~~

NOTE: Current law specifies the types of judicial proceedings in which the validity of a rule may be determined. One of the types of proceedings listed, review of proposed rules by the small business regulatory review board, is not a judicial proceeding and the reference to that review is therefore deleted by this SECTION.

**SECTION 50.** 601.41 (3) (b) of the statutes is amended to read:

601.41 (3) (b) The commissioner may, without the consent of ~~the revisor or~~ the attorney general as required under s. 227.21 (2), adopt standards of the National Association of Insurance Commissioners by incorporating by reference in rules promulgated by the commissioner any materials published, adopted, or approved by the National Association of Insurance Commissioners, without reproducing the standards in full. The standards referred to in this paragraph do not include any model act or model regulation proposed or adopted by the National Association of Insurance Commissioners. Any materials of the National Association of Insurance Commissioners that are incorporated by reference in rules promulgated by the commissioner shall be obtainable from, and are only required to be kept on file at, the office, which shall be stated in any rule containing such an incorporation by reference. Nothing in this paragraph prohibits the commissioner from adopting standards of the National Association of Insurance Commissioners through incorporation by reference in rules in the manner provided under s. 227.21 (2).

NOTE: See the Note to SECTION 36.

**SECTION 51. Effective date.** This act takes effect on the first January 1 or July 1 occurring after publication of this act whichever occurs first.