



2011 SENATE BILL 218

October 5, 2011 – Introduced by Senator LASEE, cosponsored by Representatives RIVARD and NASS. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

1 **AN ACT to repeal** 227.19 (4) (b) 5., 227.19 (4) (e) and 227.19 (6); **to renumber**
2 227.11 (2) (e); **to renumber and amend** 227.26 (2) (d) and 227.26 (2) (j); **to**
3 **amend** 227.11 (2) (intro.), 227.137 (3) (f), 227.19 (4) (b) 1. (intro.) and 227.19 (4)
4 (b) 1m.; **to repeal and recreate** 227.19 (4) (c), 227.19 (4) (d) and 227.19 (5); and
5 **to create** 227.11 (3), 227.19 (1) (b) 5. and 227.26 (2) (d) 1. to 6. of the statutes;
6 **relating to:** legislative authorization of proposed administrative rules.

Analysis by the Legislative Reference Bureau

Under current law, when a proposed administrative rule (proposed rule) is in final form, the agency promulgating the proposed rule must notify the legislature as to that fact and the presiding officer of each house of the legislature must then direct the proposed rule to be referred to one standing committee of his or her house. A standing committee to which a proposed rule is referred then has 30 days after referral within which to review the proposed rule (committee review period). During the committee review period, a standing committee may request modifications to the proposed rule, waive its jurisdiction over the proposed rule, object to the proposed rule, or approve the proposed rule.

When a standing committee's jurisdiction over a proposed rule is concluded, the proposed rule is referred to the Joint Committee for Review of Administrative Rules (JCRAR), which also has a 30-day committee review period within which to take action on the proposed rule, which actions include requesting modifications to the

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proposed rule, nonconcurring in the standing committee's objection to the proposed rule, concurring in the standing committee's approval of the proposed rule, otherwise approving the proposed rule, waiving its jurisdiction over the proposed rule, or objecting to the proposed rule in whole or in part. If JCRAR nonconcur in the standing committee's objection to, concurs in the standing committee's approval of, otherwise approves, or waives its jurisdiction over a proposed rule in whole or in part or if the JCRAR's committee review period concludes without objection to the proposed rule in whole or in part, the agency may promulgate the proposed rule or any part of the proposed rule not objected to. If JCRAR objects to the proposed rule or any part of the proposed rule, JCRAR must introduce bills in each house of the legislature to prevent promulgation of the proposed rule and the agency may not promulgate the proposed rule or any part of the proposed rule until those bills fail to be enacted.

This bill permits an agency to promulgate a rule only if a bill authorizing promulgation of the rule is enacted into law. Specifically, the bill permits a standing committee to which a proposed rule is referred to meet and take executive action in favor of introducing a bill to authorize promulgation of the proposed rule or any part of the proposed rule. If both committees to which a proposed rule is referred take that executive action, the committees must introduce those bills and the bills must be referred to JCRAR. If JCRAR does not object to the bills, the presiding officer of each house of the legislature must refer the bill introduced in that house to the calendar scheduling committee, and if either bill becomes law, the agency may promulgate the proposed rule or any part of the proposed rule to which the bills pertain.

If, however, both standing committees fail to take that executive action in favor of introducing bills to authorize promulgation of the proposed rule or the same part of the proposed rule, if JCRAR objects to the bills, or if both bills fail to be enacted, the agency may not promulgate the proposed rule or any part of the proposed rule to which the bills pertain unless a subsequent law specifically authorizes its promulgation.

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

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

1 **SECTION 1.** 227.11 (2) (intro.) of the statutes is amended to read:

2 227.11 **(2)** (intro.) ~~Rule-making~~ Subject to sub. (3), rule-making authority is
3 expressly conferred as follows:

4 **SECTION 2.** 227.11 (2) (e) of the statutes is renumbered 227.11 (4).

5 **SECTION 3.** 227.11 (3) of the statutes is created to read:

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1 227.11 **(3)** An agency may not promulgate a rule unless authority to
2 promulgate the rule is expressly conferred under sub. (2) and a bill introduced under
3 s. 227.19 (4) (c) or (d) authorizing promulgation of the rule is enacted into law. The
4 enactment of a bill authorizing promulgation of a rule does not preclude a declaratory
5 judgment under s. 227.40 invalidating the rule on the grounds that the agency lacked
6 the authority to promulgate the rule.

7 **SECTION 4.** 227.137 (3) (f) of the statutes, as created by 2011 Wisconsin Act 32,
8 is amended to read:

9 227.137 **(3)** (f) Except as provided in this paragraph, if the economic impact
10 analysis relates to a proposed rule of the department of safety and professional
11 services under s. 101.63 (1) establishing standards for the construction of a dwelling,
12 as defined in s. 101.61 (1), an analysis of whether the proposed rule would increase
13 the cost of constructing or remodeling such a dwelling by more than \$1,000. This
14 paragraph applies notwithstanding that the purpose of the one- and 2-family
15 dwelling code under s. 101.60 includes promoting interstate uniformity in
16 construction standards. This paragraph does not apply to a proposed rule whose
17 promulgation has been authorized under s. 227.19 (5) ~~(fm)~~ (c).

18 **SECTION 5.** 227.19 (1) (b) 5. of the statutes is created to read:

19 227.19 **(1)** (b) 5. The right to grant agencies final authority to promulgate a rule
20 conditioned on the enactment into law of a bill introduced under s. 227.19 (4) (c) or
21 (d) authorizing promulgation of the rule.

22 **SECTION 6.** 227.19 (4) (b) 1. (intro.) of the statutes, as affected by 2011 Wisconsin
23 Act 21, is amended to read:

24 227.19 **(4)** (b) 1. (intro.) Except as provided under ~~subds.~~ subd. 1m. ~~and 5.~~, the
25 committee review period for each committee extends for 30 days after referral of the

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1 proposed rule to the committee under sub. (2). If the chairperson or the
2 cochairpersons of a committee take either of the following actions within the 30-day
3 period, the committee review period for that committee is continued for 30 days from
4 the date on which the first 30-day review period would have expired:

5 **SECTION 7.** 227.19 (4) (b) 1m. of the statutes, as created by 2011 Wisconsin Act
6 21, is amended to read:

7 227.19 (4) (b) 1m. ~~Except as provided under subd. 5., if~~ If a notice and report
8 received under sub. (2) after the last day of the legislature's final general-business
9 floorperiod as specified in sub. (2) is referred for committee review before the first day
10 of the next regular session of the legislature, the committee review period for each
11 committee to which the proposed rule is referred extends to the day specified under
12 s. 13.02 (1) for the next legislature to convene.

13 **SECTION 8.** 227.19 (4) (b) 5. of the statutes, as affected by 2011 Wisconsin Act
14 21, is repealed.

15 **SECTION 9.** 227.19 (4) (c) of the statutes is repealed and recreated to read:

16 227.19 (4) (c) *Committee action.* Within 30 days after a committee's review
17 period has expired, the committee may meet and take executive action regarding the
18 introduction of a bill to authorize promulgation of the proposed rule or any part of
19 the proposed rule. If both committees to which a proposed rule is referred take
20 executive action in favor of introducing bills to authorize promulgation of the
21 proposed rule or the same part of the proposed rule, the committees shall introduce
22 bills within 5 days after the last committee takes executive action and the bills shall
23 be referred to the joint committee for review of administrative rules as provided in
24 sub. (5) (a), unless the bills cannot be introduced during this period under the joint
25 rules of the legislature. If both committees to which a proposed rule is referred fail

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1 to take executive action in favor of introducing bills to authorize promulgation of the
2 proposed rule or the same part of the proposed rule, the agency may not promulgate
3 the proposed rule or any part of the proposed rule unless a subsequent law
4 specifically authorizes its promulgation.

5 **SECTION 10.** 227.19 (4) (d) of the statutes, as affected by 2011 Wisconsin Acts
6 21 and 32, of the statutes is repealed and recreated to read:

7 227.19 (4) (d) *Introduction of bills in next session; effect.* If the bills required
8 under par. (c) are introduced on or after February 1 of an even-numbered year and
9 before the next regular session of the legislature commences, as provided under s.
10 13.02 (2), or if the bills cannot be introduced during this period under the joint rules
11 of the legislature, the committees that took executive action in favor of introducing
12 the bills shall introduce the bills on the first day of the next regular session of the
13 legislature, and the bills shall be referred to the joint committee for review of
14 administrative rules as provided in sub. (5) (a), unless either house adversely
15 disposes of either bill. If either house adversely disposes of either bill before the next
16 regular session of the legislature commences, the agency may not promulgate the
17 proposed rule or any part of the proposed rule to which the bills pertain unless a
18 subsequent law specifically authorizes its promulgation. In this paragraph,
19 “adversely disposes of” means that one house has voted in one of the following ways:

- 20 1. To indefinitely postpone the bill.
- 21 2. To nonconcur in the bill.
- 22 3. Against ordering the bill engrossed.
- 23 4. Against ordering the bill to a 3rd reading.
- 24 5. Against passage.
- 25 6. Against concurrence.

SENATE BILL 218**SECTION 11**

1 **SECTION 11.** 227.19 (4) (e) of the statutes, as affected by 2011 Wisconsin Act 21,
2 is repealed.

3 **SECTION 12.** 227.19 (5) of the statutes, as affected by 2011 Wisconsin Acts 21
4 and 32, is repealed and recreated to read:

5 **227.19 (5) JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES.** (a) *Referral;*
6 *review period.* If both committees to which a proposed rule is referred introduce bills
7 under sub. (4) (c) or (d) to authorize promulgation of a proposed rule or the same part
8 of a proposed rule, the chief clerks of the respective houses shall refer the bills to the
9 joint committee for review of administrative rules. The review period for the joint
10 committee for review of administrative rules extends for 30 days after the last bill
11 is referred to the committee, and during that period that committee may meet and
12 take action in executive session as provided in par. (b).

13 (b) *Joint committee action.* If the joint committee for review of administrative
14 rules does not object to the bills by the end of the review period under par. (a), the
15 presiding officer of each house of the legislature shall refer the bill introduced in that
16 house to the calendar scheduling committee. If the joint committee for review of
17 administrative rules meets and takes executive action to object to the bills, the
18 agency may not promulgate the proposed rule or any part of the proposed rule to
19 which the bills pertain unless a subsequent law specifically authorizes its
20 promulgation.

21 (c) *Bill to authorize promulgation of rule; effect.* If both bills introduced under
22 sub. (4) (c) or (d) are defeated, or fail to be enacted in any other manner, the agency
23 may not promulgate the proposed rule or any part of the proposed rule to which the
24 bills pertain unless a subsequent law specifically authorizes its promulgation. If

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1 either bill becomes law, the agency may promulgate the proposed rule or any part of
2 the proposed rule to which the bills pertain.

3 **SECTION 13.** 227.19 (6) of the statutes, as affected by 2011 Wisconsin Acts 21
4 and 32, is repealed.

5 **SECTION 14.** 227.26 (2) (d) of the statutes is renumbered 227.26 (2) (d) (intro.)
6 and amended to read:

7 227.26 (2) (d) *Temporary suspension of rules.* (intro.) The committee may
8 suspend any rule by a majority vote of a quorum of the committee. A rule may be
9 suspended only on the basis of testimony in relation to that rule received at a public
10 hearing and only for one or more of the following reasons ~~specified under s. 227.19~~
11 ~~(4) (d).~~;

12 **SECTION 15.** 227.26 (2) (d) 1. to 6. of the statutes are created to read:

13 227.26 (2) (d) 1. An absence of statutory authority.

14 2. An emergency relating to public health, safety, or welfare.

15 3. A failure to comply with legislative intent.

16 4. A conflict with state law.

17 5. A change in circumstances since enactment of the earliest law upon which
18 the proposed rule is based.

19 6. Arbitrariness and capriciousness, or imposition of an undue hardship.

20 **SECTION 16.** 227.26 (2) (j) of the statutes is renumbered 227.26 (2) (j) (intro.)
21 and amended to read:

22 227.26 (2) (j) *Late introduction of bills; effect.* (intro.) If the bills required under
23 par. (f) are introduced on or after February 1 of an even-numbered year and before
24 the next regular session of the legislature commences, as provided under s. 13.02 (2),
25 or if the bills cannot be introduced during this time period under the joint rules of

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1 the legislature, unless either house adversely disposes of either bill, the committee
2 shall introduce the bills on the first day of the next regular session of the legislature.
3 If the committee is required to introduce the bills on the first day of the next regular
4 session, the rule to which the bills pertain remains suspended except as provided in
5 par. (i). If either house adversely disposes of either bill, the rule remains in effect and
6 the committee may not suspend it again. In this paragraph, “adversely disposes of”
7 has the meaning given under s. 227.19 ~~(5) (g)~~ (4) (d).

8 **SECTION 17. Nonstatutory provisions.**

9 (1) LEGISLATIVE APPROVAL OF RULES. This act first applies to a proposed rule
10 submitted to the legislature under section 227.19 (2) of the statutes on the effective
11 date of this subsection.

12 (END)