

2011 DRAFTING REQUEST

Bill

Received: **03/03/2011**

Received By: **gmalaise**

Wanted: **Today**

Companion to LRB:

For: **Frank Lasee (608) 266-3512**

By/Representing: **Jon Kruse**

May Contact:

Drafter: **gmalaise**

Subject: **Administrative Law**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lasee@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Legislative review of proposed administrative rules

Instructions:

Provide for review by full legislature of all proposed administrative rules, not just rules objected to by JCRAR

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 03/03/2011	kfollett 03/03/2011		_____			State
/1			rschluet 03/03/2011	_____	mbarman 03/03/2011		State
/2	gmalaise 04/26/2011	kfollett 04/28/2011	rschluet 04/28/2011	_____	lparisi 04/28/2011		State
/3	gmalaise	kfollett	rschluet	_____	lparisi		State

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	07/27/2011	07/28/2011	07/28/2011	_____	07/28/2011		
/4	gmalaise 08/31/2011	kfollett 08/31/2011	rschluet 08/31/2011	_____	sbasford 08/31/2011	mbarman 10/04/2011	

FE Sent For:

↳ At Intro.

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14kf
8/31

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13/5
7/28
72811
JP

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/?	gmalaise 03/03/2011	lrb_editor 1/16/11 3/3					State

FE Sent For:

<END>



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1583/...
GMM.....

Handwritten circled number 1

IN 313

Today

Gen

1 AN ACT ...; relating to: legislative review of proposed administrative rules.

Proposed

Proposed

Analysis by the Legislative Reference Bureau

X

Under current law, when a proposed administrative rule (rule) is in final form, the agency promulgating the 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 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 nonconcurr 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 rule or any part of the 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.

Proposed 2

Proposed

This bill requires JCRAR to introduce bills in each house of the legislature to prevent promulgation of *all* proposed rules reviewed by JCRAR, regardless of whether JCRAR objects to the proposed rule or any part of the proposed rule. Under the bill, if both bills fail to be enacted, the agency may promulgate the proposed rule or any part of the proposed rule to which the bills pertain. If either bill becomes law, 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 such 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. 227.19 (5) (c) of the statutes, as affected by 2011 Wisconsin Act ...
2 (January 2011 Special Session Assembly Bill 8), is amended to read:

3 227.19 (5) (c) *Agency not to promulgate rule during joint committee legislative*
4 *review.* An agency may not promulgate a proposed rule or a part of a proposed rule
5 ~~until the joint committee for review of administrative rules nonconcurs in the~~
6 ~~objection of the committee, concurs in the approval of the committee, otherwise~~
7 ~~approves the proposed rule or part of the proposed rule, or waives its jurisdiction over~~
8 ~~the proposed rule or part of the proposed rule under par. (d), until the expiration of~~
9 ~~the review period under par. (b) 1., if no committee has objected to the proposed rule~~
10 ~~or the part of the proposed rule, or until a bill introduced under par. (e) fails to be~~
11 ~~enacted. An agency may promulgate any part of a proposed rule to which no objection~~
12 ~~has been made.~~

13 SECTION 2. 227.19 (5) (d) of the statutes, as affected by 2011 Wisconsin Act ...
14 (January 2011 Special Session Assembly Bill 8), is amended to read:

15 227.19 (5) (d) *Joint committee action.* The joint committee for review of
16 administrative rules may nonconcur in a committee's objection to a proposed rule or
17 a part of a proposed rule, concur in a committee's approval of a proposed rule or a part

1 of a proposed rule, otherwise approve a proposed rule or a part of a proposed rule, or
2 waive its jurisdiction over a proposed rule or a part of a proposed rule by voting to
3 nonconcur, concur, or approve, or to waive its jurisdiction, ^{plain} during the applicable
4 review period under par. (b). ~~If the joint committee for review of administrative rules~~
5 ~~objects to a proposed rule or a part of a proposed rule, an agency may not promulgate~~
6 ~~the proposed rule or part of the proposed rule objected to until a bill introduced under~~
7 ~~par. (e) fails to be enacted.~~ The joint committee for review of administrative rules
8 may object to a proposed rule or a part of a proposed rule only for one or more of the
9 reasons specified under sub. (4) (d).

10 **SECTION 3.** 227.19 (5) (e) of the statutes, as affected by 2011 Wisconsin Act
11 (January 2011 Special Session Assembly Bill 8), is amended to read:

12 227.19 (5) (e) *Bills to prevent promulgation.* When the review period for the
13 joint committee for review of administrative rules objects to a proposed rule or a part
14 of a proposed rule it is concluded, the joint committee shall, within 30 days of the date
15 of the objection after the conclusion of the review period, meet and take executive
16 action regarding the introduction, in each house of the legislature, of a bill to support
17 the objection prevent promulgation of the proposed rule. The joint committee shall
18 introduce the bills within 5 working days after taking executive action in favor of
19 introduction of the bills unless the bills cannot be introduced during this time period
20 under the joint rules of the legislature.

21 **SECTION 4.** 227.19 (5) (f) of the statutes, as affected by 2011 Wisconsin Act
22 (January 2011 Special Session Assembly Bill 8), is amended to read:

23 227.19 (5) (f) *Timely introduction of bills; effect.* If both bills required under par.
24 (e) are defeated, or fail to be enacted in any other manner, the agency may
25 promulgate the proposed rule or any part of the proposed rule ~~that was objected to~~

1 which the bills pertain. If either bill becomes law, the agency may not promulgate
2 the proposed rule or any part of the proposed rule ~~that was objected to~~ which the bills
3 pertain unless a subsequent law specifically authorizes its promulgation. This
4 paragraph applies to bills introduced on or after the day specified under s. 13.02 (1)
5 for the legislature to convene and before February 1 of an even-numbered year.

6 **SECTION 5.** 227.19 (5) (g) (intro.) of the statutes, as affected by 2011 Wisconsin
7 Act (January 2011 Special Session Assembly Bill 8), is amended to read:

8 227.19 (5) (g) (intro.) If the bills required under par. (e) are introduced on or
9 after February 1 of an even-numbered year and before the next regular session of
10 the legislature commences, as provided under s. 13.02 (2), or if the bills cannot be
11 introduced during this time period under the joint rules of the legislature, the joint
12 committee for review of administrative rules shall introduce the bills on the first day
13 of the next regular session of the legislature, unless either house adversely disposes
14 of either bill. If the ~~joint committee for review of administrative rules is required to~~
15 ~~introduce the bills~~ required under par. (e) are introduced as provided in this
16 paragraph, the agency may not promulgate the proposed rule or any part of the
17 proposed rule to which the bills pertain except as provided in par. (f). If either house
18 adversely disposes of either bill, the agency may promulgate the proposed rule or any
19 part of the proposed rule ~~that was objected to~~ which the bills pertain. In this
20 paragraph, “adversely disposes of” means that one house has voted in one of the
21 following ways:

22 **SECTION 6.** 227.19 (6) (a) 1. of the statutes, as affected by 2011 Wisconsin Act
23 (January 2011 Special Session Assembly Bill 8), is amended to read:

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

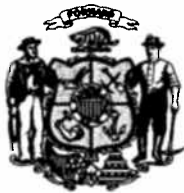
LRB

Don Kense

4/26/11

Redraft - agency may not promulgate rule

unless legislature authorizes promulgation



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1583/1
GMM:kjf:rs

IN 4/26
wanted 4/28

2
RMZ

2011 BILL

authorization

Regments

1 AN ACT *to amend* 227.19 (5) (c), 227.19 (5) (d), 227.19 (5) (e), 227.19 (5) (f), 227.19
2 (5) (g) (intro.), 227.19 (6) (a) 1. and 227.19 (6) (a) 4. of the statutes; **relating to:**
3 legislative ~~review~~ 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.

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BILL

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This bill requires JCRAR to introduce bills in each house of the legislature to ~~prevent~~ promulgation of *all* proposed rules reviewed by JCRAR, regardless of whether JCRAR objects to the proposed rule or any part of the proposed rule. Under the bill, if both bills fail to be enacted, the agency may ~~promulgate~~ the proposed rule or any part of the proposed rule to which the bills pertain. If either bill becomes law, 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 such 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:

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8 nonconcur, concur, or approve, or to waive its jurisdiction, during the applicable
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12 ~~par. (e) fails to be enacted.~~ The joint committee for review of administrative rules
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14 reasons specified under sub. (4) (d). authorize

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17 227.19 (5) (e) *Bills to ~~prevent~~ promulgation.* When the review period for the
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19 of a proposed rule it is concluded, the joint committee shall, within 30 days of the date
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move

8 pertain ~~unless a subsequent law specifically authorizes its promulgation~~. This

move

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11 SECTION 5. 227.19 (5) (g) (intro.) of the statutes, as affected by 2011 Wisconsin

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14 after February 1 of an even-numbered year and before the next regular session of

15 the legislature commences, as provided under s. 13.02 (2), or if the bills cannot be

16 introduced during this time period under the joint rules of the legislature, the joint

17 committee for review of administrative rules shall introduce the bills on the first day

18 of the next regular session of the legislature, unless either house adversely disposes

19 of either bill. If the ~~joint committee for review of administrative rules is required to~~

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21 paragraph, the agency may not promulgate the proposed rule or any part of the

22 proposed rule to which the bills pertain except as provided in par. (f). If either house

23 adversely disposes of either bill, the agency may ~~not~~ promulgate the proposed rule or any

not

24 part of the proposed rule ~~that was objected to~~ which the bills pertain. In this

unless a subsequent law specifically authorizes its

promulgation before the next regular session of the legislature commences

promulgation

Inserts - 2

Section #. 227.19 (6) (title) of the statutes is amended to read:

(S) AUTHORIZATION

227.19 (6) (title) PROMULGATION ~~PREVENTION~~ PROCEDURE.

History: 1985 a. 182; 1987 a. 253; 1987 a. 403 s. 256; 1989 a. 175; 2001 a. 87; 2003 a. 118, 277; 2005 a. 249; 2007 a. 20, 180.

(end of insert)

Malaise, Gordon

From: Kovach, Robert
Sent: Tuesday, June 28, 2011 3:59 PM
To: Malaise, Gordon
Subject: LRB-1583/2 Administrative Rules bill draft
Attachments: REINS Act - DRAFT - June 22, 2011.doc

Hi Gordon,

Senator Lasee was working with some of his contacts regarding language for the administrative rules issue (LRB-1583/2) and we worked out some language that worked better for what the Senator wanted to do. Could you incorporate this language into the draft instead of what we had before?

Please contact me if you have any questions. Thanks!

Rob Kovach
Chief of Staff
Office of State Senator Frank Lasee
608-266-3512

May call Andrew Cook 219-4632

(2)

227.11(f) is created to read:

(f) Any act of the legislature to effectuate a proposed rule under s. 227.19 shall not itself be considered a grant of rulemaking authority for that rule. Any rule effectuated by an act of the legislature must rely upon statutory authority independent of the action taken under s. 227.19 to be valid. Any action taken by the legislature under s. 227.19 shall not preclude a person from seeking a declaratory judgment under s. 227.40 to invalidate a rule on the basis that the agency lacked underlying statutory authority for the rule.

(2)

227.11(g) is created to read:

(g) An agency may not promulgate a rule unless, pursuant to s. 227.19(4) and (5), legislative committees in both houses introduce and pass legislation granting the agency rulemaking authority and the bill is signed into law by the governor.

227.19 Legislative review prior to promulgation.

(1)(b) The legislature recognizes the need for efficient administration of public policy. In creating agencies and designating their function and purposes, the legislature may delegate rule-making authority to these agencies to facilitate administration of legislative policy. The delegation of rule-making authority is intended to eliminate the necessity of establishing every administrative aspect of general public policy by legislation. In so doing, however, the legislature reserves to itself:

1. The right to retract any delegation of rule-making authority.
2. The right to establish any aspect of general policy by legislation, notwithstanding any delegation of rule-making authority.
3. The right and responsibility to designate the method for rule promulgation, review, and modification.
4. The right to delay or suspend the implementation of any rule or proposed rule while under review of the legislature.
5. The right to grant agencies final rule-making authority conditioned upon the legislature introducing and passing legislation in both houses approving the proposed rule and governor signing the bill into law.

CR

227.19 (1)(b) 5.

(4) COMMITTEE LEGISLATIVE REVIEW. (a) *Notice of referral.* Upon receipt of notice that a proposed rule has been referred to a committee under sub. (2), the chairperson or chairpersons of the committee shall notify, in writing, each committee member of the referral.

(am) *Committee meeting.* A committee may be convened upon the call of its chairperson or cochairpersons to review a proposed rule. A committee may meet separately or jointly with the other committee to which the notice and report were referred. A committee may hold a public hearing to review a proposed rule.

(b) *Committee review period.* 1. ~~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

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227.19 (4)(b)

1. ASF

Act 21

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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 30-day review period would have expired:

a. Request in writing that the agency meet with the committee to review the proposed rule.

b. Publish or post notice that the committee will hold a meeting or hearing to review the proposed rule and immediately send a copy of the notice to the agency.

2. If a committee, by a majority vote of a quorum of the committee, requests modifications in a proposed rule, and the agency, in writing, agrees to 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.

2m. If a committee requests in writing that the public service commission determine the rule's impact on the cost or reliability of electricity generation, transmission, or distribution or of fuels used in generating electricity, the commission shall prepare an energy impact report in the manner provided under s. 227.117 (1). The commission shall submit a copy of the report to the committee and to the agency that proposed the rule within 30 days after the written request is submitted to the commission. The review period for both committees is extended to the 10th working day following receipt by the committees of the report, to the expiration of the review period under subd. 1., or to the expiration of the review period under subd. 2., whichever is later.

3. An agency may, on its own initiative, submit a germane modification to a proposed rule to a committee during its review period. If a germane modification is submitted within the final 10 days of a committee review period, the review period for both committees is extended for 10 working days. If a germane modification is submitted to a committee after the committee in the other house has concluded its jurisdiction over the proposed rule, the jurisdiction of the committee of the other house is revived for 10 working days. In this subdivision, an agency's proposal to delete part of a proposed rule under committee review shall be treated as a germane modification of the proposed rule.

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.

4. An agency may modify a proposed rule following the committee review period if the modification is germane to the subject matter of the proposed rule. If a germane modification is made, the agency shall recall the proposed rule from the chief clerk of each house of the legislature. The proposed rule, with the germane modification, shall be resubmitted to the presiding officer in each house of the legislature as provided in sub. (2) and the committee review period shall begin again. Following the committee review period, an agency may not make any modification that is not germane to the

subject matter of the proposed rule. In this subdivision, an agency's proposal to delete part of a proposed rule under committee review shall be treated as a germane modification of the proposed rule.

RP
227.19 (4)(b)
S. aff KCTZ

5. If a committee in one house votes to object to a proposed rule under par. (d), the chairperson or cochairpersons of the committee shall immediately notify the chairperson or cochairpersons of the committee to which the proposed rule was referred in the other house. Upon receipt of the notice, the review period for the committee in the other house immediately ceases and no further action on the proposed rule may be taken under this paragraph, but the committee may proceed under par. (d) to object to the proposed rule.

65. 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 10 working days after that date, the presiding officer of the appropriate house shall refer the proposed rule to the appropriate standing committee 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.

RP
(4)(c)
aff A. 7-21

~~(e) Waiver of committee review. A committee may waive its jurisdiction over a proposed rule prior to the expiration of the committee review period by adopting, by a majority vote of a quorum of the committee, a motion waiving the committee's jurisdiction.~~

(c) Committee legislative action. When the review period for the respective legislative committees is concluded, each committee may, within 30 days after the conclusion of the review period, meet and take executive action regarding the introduction, in each house of the legislature, of a bill to authorize promulgation of the proposed rule. If the committees decide to introduce the bills, the bills shall be introduced within 5 working days, unless the bills cannot be introduced during this time period under the joint rules of the legislature. If the bills are introduced in a timely fashion, the bills shall be referred to the joint committee for review of administrative rules. If the committees either vote against introduction of a bill or fail to take executive action within 30 days after the conclusion of the review period, the rule may not be promulgated and shall not be referred to the joint committee for review of administrative rules. A committee, by a majority vote of a quorum of the committee during the review period under par. (b), may object to a proposed rule for one or more of the following reasons:

RP (4)(d)
aff A. 7-21
232

- 1— An absence of statutory authority.
- 2— An emergency relating to public health, safety or welfare.
- 3— A failure to comply with legislative intent.
- 4— A conflict with state law.
- 5— A change in circumstances since enactment of the earliest law upon which the proposed rule is based.
- 6— Arbitrariness and capriciousness, or imposition of an undue hardship.

RP
(4)(e),
aff A. 7-21

~~(e) Conclusion of committee jurisdiction. Subject to par. (b)3., a committee's jurisdiction over a proposed rule is concluded when the committee objects to, approves, or waives its jurisdiction over the proposed rule or when the committee review period ends, whichever occurs first. When a committee's jurisdiction over a proposed rule is~~

concluded, the committee shall report the proposed rule and any objection as provided in sub. (5)(a).

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(5) JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES. (a) If the legislative committees meet and take executive action regarding the introduction of legislation to authorize promulgation of the proposed rule under sub. 4(d), the chief clerk shall refer the bill to the joint committee for review of administrative rules. The review period for the joint committee for review of administrative rules extends for 30 days after the bill under sub. 4(d) is referred to the committee. If the joint committee for review of administrative rules does not object to the introduced bill within 30 days, the presiding officer of each house of the legislature shall refer the bill to the calendar scheduling committee. If the joint committee for review of administrative rules meets to take executive action and objects to the bill, 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.

(b) Timely introduction of bills; effect. If both bills required under sub. (4)(d) are defeated, or fail to be enacted in any other manner, the agency may not promulgate the proposed rule or any part of the proposed rule to which the bills pertain unless subsequent law specifically authorizes its promulgation. If the bill becomes law, the agency shall promulgate the proposed rule. This paragraph applies to bills introduced on or after the day specified under s. 13.02 (1) for the legislature to convene and before February 1 of an even-numbered year.

(c) If the bills required under sub. (4) (d) 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 committees that have received the proposed rule under sub. (2) shall 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 bills required under sub. 4(d) are introduced on the first day of the next regular session of the legislature as provided in this paragraph, the agency may not promulgate the proposed rule or any part of the proposed rule to which the bills pertain except as provided in par. (b). If either house adversely disposes of either bill before the next regular session of the legislature commences, the agency may not promulgate the proposed rule or any part of the proposed rule to which the bills pertain. In this paragraph, "adversely disposes of" means that one house has voted in one of the following ways:

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1. To indefinitely postpone the bill.
2. To nonconcur in the bill.
3. Against ordering the bill engrossed.
4. Against ordering the bill to a 3rd reading.
5. Against passage.
6. Against concurrence.

(a) Referral. If a committee objects to a proposed rule, the committee shall report the proposed rule and the objection to the chief clerk of the appropriate house within 5 working days after making the objection. The 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.

(b) Joint committee review period. 1. 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 30-day review period would have expired:

—— a. Request in writing that the agency meet with the joint committee for review of administrative rules to review the proposed rule.

—— b. Publish or post notice that the joint committee for review of administrative rules will hold a meeting or hearing to review the proposed rule and immediately send a copy of the notice to the agency.

2. — If the joint committee for review of administrative rules, by a majority vote of a quorum of the committee, requests modifications in a proposed rule, and the agency, in writing, agrees to consider making modifications, the review period for the joint committee 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.

3. — If both committees object to a proposed rule, each objection has a separate review period beginning on the date of its receipt.

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 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.

—— (e) *Agency not to promulgate rule during joint committee review.* An agency may not promulgate a proposed rule to which a committee has objected unless the joint committee for review of administrative rules, under par. (d), noneconcurs in the action of the committee, or until a bill introduced under par. (e) fails to be enacted. An agency may promulgate any part of a proposed rule to which no objection has been made.

(d) *Joint committee action.* The joint committee for review of administrative rules may noneconcur in a committee's objection to a proposed rule by voting to noneconcur during the review period under par. (b). If the joint committee for review of administrative rules objects to a proposed rule, an agency may not promulgate the proposed rule until a bill introduced under par. (e) fails to be enacted. The joint committee for review of administrative rules may object to a proposed rule only for one or more of the reasons specified under sub. (4) (d).

(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, 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.

~~—— (f) *Timely introduction of bills; effect.* If both bills required under par. (e) are defeated, or fail to be enacted in any other manner, the agency may promulgate the proposed rule that was objected to. If either bill becomes law, the agency may not promulgate the proposed rule that was objected to unless a subsequent law specifically authorizes its promulgation. This paragraph applies to bills introduced on or after the day specified under s. 13.02 (1) for the legislature to convene and before February 1 of an even-numbered year.~~

~~1—— (g) 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 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 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:~~

- ~~1— To indefinitely postpone the bill.~~
- ~~2— To nonconcur in the bill.~~
- ~~3— Against ordering the bill engrossed.~~
- ~~4— Against ordering the bill to a 3rd reading.~~
- ~~5— Against passage.~~
- ~~6— Against concurrence.~~

(R) 227.19(6) Repeal 227.19(6). Renumber 227.19(7) as 227.19(6).

off Act 21

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State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1583/2
GMM:kjf:rs

(3)
RMR

IN 7/27

2011 BILL

Wanted RA 7/28

Referred to

1 AN ACT to amend 227.19 (5) (c), 227.19 (5) (d), 227.19 (5) (e), 227.19 (5) (f), 227.19
2 (5) (g) (intro.), 227.19 (6) (title), 227.19 (6) (a) 1. and 227.19 (6) (a) 4. of the
3 statutes; relating to: legislative authorization of proposed administrative
4 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 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

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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 requires JCRAR to introduce bills in each house of the legislature to authorize promulgation of all proposed rules reviewed by JCRAR, regardless of whether JCRAR objects to the proposed rule or any part of the proposed rule. Under the bill, 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 such promulgation. If either bill becomes law, the agency may promulgate the proposed rule or any part of the proposed rule to which the bills pertain.~~

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.** 227.19 (5) (c) of the statutes, as affected by 2011 Wisconsin Act ...
2 (January 2011 Special Session Assembly Bill 8), is amended to read:

3 ~~227.19 (5) (c) Agency not to promulgate rule during joint committee legislative~~
4 ~~review. An agency may not promulgate a proposed rule or a part of a proposed rule~~
5 ~~until the joint committee for review of administrative rules nonconcurs in the~~
6 ~~objection of the committee, concurs in the approval of the committee, otherwise~~
7 ~~approves the proposed rule or part of the proposed rule, or waives its jurisdiction over~~
8 ~~the proposed rule or part of the proposed rule under par. (d), until the expiration of~~
9 ~~the review period under par. (b) 1., if no committee has objected to the proposed rule~~
10 ~~or the part of the proposed rule, or until a bill introduced under par. (e) fails to be is~~
11 ~~enacted. An agency may promulgate any part of a proposed rule to which no objection~~
12 ~~has been made.~~

BILL

1 **SECTION 2.** 227.19 (5) (d) of the statutes, as affected by 2011 Wisconsin Act
2 (January 2011 Special Session Assembly Bill 8), is amended to read:

3 227.19 (5) (d) *Joint committee action.* The joint committee for review of
4 administrative rules may nonconcur in a committee's objection to a proposed rule or
5 a part of a proposed rule, concur in a committee's approval of a proposed rule or a part
6 of a proposed rule, otherwise approve a proposed rule or a part of a proposed rule, or
7 waive its jurisdiction over a proposed rule or a part of a proposed rule by voting to
8 nonconcur, concur, or approve, or to waive its jurisdiction, during the applicable
9 review period under par. (b). ~~If the joint committee for review of administrative rules
10 objects to a proposed rule or a part of a proposed rule, an agency may not promulgate
11 the proposed rule or part of the proposed rule objected to until a bill introduced under
12 par. (e) fails to be enacted.~~ The joint committee for review of administrative rules
13 may object to a proposed rule or a part of a proposed rule only for one or more of the
14 reasons specified under sub. (4) (d).

15 **SECTION 3.** 227.19 (5) (e) of the statutes, as affected by 2011 Wisconsin Act
16 (January 2011 Special Session Assembly Bill 8), is amended to read:

17 227.19 (5) (e) *Bills to ~~prevent~~ authorize promulgation.* When the review period
18 for the joint committee for review of administrative rules objects to a proposed rule
19 or a part of a proposed rule it is concluded, the joint committee shall, within 30 days
20 of the date of the objection after the conclusion of the review period, meet and take
21 executive action regarding the introduction, in each house of the legislature, of a bill
22 to support the objection authorize promulgation of the proposed rule. The joint
23 committee shall introduce the bills within 5 working days after taking executive
24 action in favor of introduction of the bills unless the bills cannot be introduced during
25 this time period under the joint rules of the legislature.

BILL**SECTION 4**

1 **SECTION 4.** 227.19 (5) (f) of the statutes, as affected by 2011 Wisconsin Act ...
2 (January 2011 Special Session Assembly Bill 8), is amended to read:

3 227.19 (5) (f) *Timely introduction of bills; effect.* If both bills required under par.
4 (e) are defeated, or fail to be enacted in any other manner, the agency may not
5 promulgate the proposed rule or any part of the proposed rule ~~that was objected to~~
6 which the bills pertain unless subsequent law specifically authorizes its
7 promulgation. If either bill becomes law, the agency may ~~not~~ promulgate the
8 proposed rule or any part of the proposed rule ~~that was objected to unless a~~
9 ~~subsequent law specifically authorizes its promulgation~~ which the bills pertain. This
10 paragraph applies to bills introduced on or after the day specified under s. 13.02 (1)
11 for the legislature to convene and before February 1 of an even-numbered year.

12 **SECTION 5.** 227.19 (5) (g) (intro.) of the statutes, as affected by 2011 Wisconsin
13 Act ... (January 2011 Special Session Assembly Bill 8), is amended to read:

14 227.19 (5) (g) (intro.) If the bills required under par. (e) are introduced on or
15 after February 1 of an even-numbered year and before the next regular session of
16 the legislature commences, as provided under s. 13.02 (2), or if the bills cannot be
17 introduced during this time period under the joint rules of the legislature, the joint
18 committee for review of administrative rules shall introduce the bills on the first day
19 of the next regular session of the legislature, unless either house adversely disposes
20 of either bill. ~~If the joint committee for review of administrative rules is required to~~
21 ~~introduce the bills~~ required under par. (e) are introduced on the first day of the next
22 regular session of the legislature as provided in this paragraph, the agency may not
23 promulgate the proposed rule or any part of the proposed rule to which the bills
24 pertain except as provided in par. (f). If either house adversely disposes of either bill
25 before the next regular session of the legislature commences, the agency may not

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1583/3ins
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(INSERT 5-16)

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:

History: 1985 a. 182; 1991 a. 209; 2011 a. 21.

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:

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

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

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

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

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1 promulgate the proposed rule or ~~any part of the proposed rule that was objected to~~
2 ~~which the bills pertain unless a subsequent law specifically authorizes its~~
3 ~~promulgation.~~ In this paragraph, "adversely disposes of" means that one house has
4 voted in one of the following ways:

5 **SECTION 6.** 227.19 (6) (title) of the statutes is amended to read:

6 227.19 (6) (title) ~~PROMULGATION PREVENTION~~ AUTHORIZATION PROCEDURE.

7 **SECTION 7.** 227.19 (6) (a) 1. of the statutes, as affected by 2011 Wisconsin Act
8 (January 2011 Special Session Assembly Bill 8), is amended to read:

9 227.19 (6) (a) 1. An explanation of the issue involving the proposed rule ~~or part~~
10 ~~of the proposed rule objected to which the bills pertain~~ and the factual situation out
11 of which the issue arose.

12 **SECTION 8.** 227.19 (6) (a) 4. of the statutes, as affected by 2011 Wisconsin Act
13 (January 2011 Special Session Assembly Bill 8), is amended to read:

14 227.19 (6) (a) 4. A statement and analysis of the grounds upon which the joint
15 committee for review of administrative rules relies for ~~objecting its action with~~
16 ~~respect to the proposed rule or part of the proposed rule.~~
17

SECTION 9. Nonstatutory provisions.

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

21 (END)

Incl
16
5-16-11
17

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

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

6 227.19 (4) (b) 1. (intro.) Except as provided under ~~subds. subd. 1m. and 5.~~, the
7 committee review period for each committee extends for 30 days after referral of the
8 proposed rule to the committee under sub. (2). If the chairperson or the
9 cochairpersons of a committee take either of the following actions within the 30-day
10 period, the committee review period for that committee is continued for 30 days from
11 the date on which the first 30-day review period would have expired:

History: 1985 a. 182; 1987 a. 253; 1987 a. 403 s. 256; 1989 a. 175; 2001 a. 87; 2003 a. 118, 277; 2005 a. 249; 2007 a. 20, 180; 2011 a. 21.

12 SECTION 7. 227.19 (4) (b) 1m. of the statutes, as created by 2011 Wisconsin Act
13 21, is amended to read:

14 227.19 (4) (b) 1m. ~~Except as provided under subd. 5., if~~ If a notice and report
15 received under sub. (2) after the last day of the legislature's final general-business
16 floorperiod as specified in sub. (2) is referred for committee review before the first day
17 of the next regular session of the legislature, the committee review period for each
18 committee to which the proposed rule is referred extends to the day specified under
19 s. 13.02 (1) for the next legislature to convene.

History: 1985 a. 182; 1987 a. 253; 1987 a. 403 s. 256; 1989 a. 175; 2001 a. 87; 2003 a. 118, 277; 2005 a. 249; 2007 a. 20, 180; 2011 a. 21.

20 SECTION 8. 227.19 (4) (b) 5. of the statutes, as affected by 2011 Wisconsin Act
21 21, is repealed. *(circled) COMMITTEE ACTION.*

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

23 227.19 (4) (c) Within 30 days after a committee's review period has expired, the
24 committee may meet and take executive action regarding the introduction of a bill

1 to authorize promulgation of the proposed rule or any part of the proposed rule. If
2 both committees to which a proposed rule is referred take executive action in favor
3 of introducing bills to authorize promulgation of the proposed rule or the same part
4 of the proposed rule, the committees shall introduce bills within 5 days after the last
5 committee takes executive action and the bills shall be referred to the joint
6 committee for review of administrative rules as provided in sub. (5) (a), unless the
7 bills cannot be introduced during this period under the joint rules of the legislature.

8 If both committees to which a proposed rule is referred fail to take executive action
9 in favor of introducing bills to authorize promulgation of the proposed rule or the
10 same part of the proposed rule, the agency may not promulgate the proposed rule or
11 any part of the proposed rule unless a subsequent law specifically authorizes its
12 promulgation.

bills

Introduction of bills in next session; effect

13 SECTION 10. 227.19 (4) (d) of the statutes, as affected by 2011 Wisconsin Acts
14 21 and 32, of the statutes is repealed and recreated to read:

Committee action

no change

15 227.19 (4) (d) If the bills required under par. (c) are introduced on or after
16 February 1 of an even-numbered year and before the next regular session of the
17 legislature commences, as provided under s. 13.02 (2), or if the bills cannot be
18 introduced during this period under the joint rules of the legislature, the committees
19 that took executive action in favor of introducing the bills shall introduce the bills
20 on the first day of the next regular session of the legislature, and the bills shall be
21 referred to the joint committee for review of administrative rules as provided in sub.
22 (5) (a), unless either house adversely disposes of either bill. If either house adversely
23 disposes of either bill before the next regular session of the legislature commences,
24 the agency may not promulgate the proposed rule or any part of the proposed rule
25 to which the bills pertain unless a subsequent law specifically authorizes its

1 promulgation. In this paragraph, “adversely disposes of” means that one house has
2 voted in one of the following ways:

- 3 1. To indefinitely postpone the bill.
- 4 2. To nonconcur in the bill.
- 5 3. Against ordering the bill engrossed.
- 6 4. Against ordering the bill to a 3rd reading.
- 7 5. Against passage.
- 8 6. Against concurrence.

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

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

13 227.19 (5) JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES. (a) *Referral;*
14 *review period.* If both committees to which a proposed rule is referred introduce bills
15 under sub. (4) (c) or (d) to authorize promulgation of a proposed rule or the same part
16 of a proposed rule, the chief clerks of the respective houses shall refer the bills to the
17 joint committee for review of administrative rules. The review period for the joint
18 committee for review of administrative rules extends for 30 days after the last bill
19 is referred to the committee, and during that period that committee may meet and
20 take action in executive session as provided in par. (b).

21 (b) *Joint committee action.* If the joint committee for review of administrative
22 rules does not object to the bills by the end of the review period under par. (a), the
23 presiding officer of each house of the legislature shall refer the bill introduced in that
24 house to the calendar scheduling committee. If the joint committee for review of
25 administrative rules meets and takes executive action to object to the bills, the

1 agency may not promulgate the proposed rule or any part of the proposed rule to
2 which the bills pertain unless a subsequent law specifically authorizes its
3 promulgation.

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

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

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

14 227.26 (2) (d) (intro.) *Temporary suspension of rules.* The committee may
15 suspend any rule by a majority vote of a quorum of the committee. A rule may be
16 suspended only on the basis of testimony in relation to that rule received at a public
17 hearing and only for one or more of the following reasons specified under s. 227.19
18 (4) (d):

19 History: 1985 a. 182 ss. 1, 3, 50; 1987 a. 186; 2005 a. 249.

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

- 20 227.26 (2) (d) 1. An absence of statutory authority.
- 21 2. An emergency relating to public health, safety, or welfare.
- 22 3. A failure to comply with legislative intent.
- 23 4. A conflict with state law.

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

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

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

6 227.26 (2) (j) (intro.) *Late introduction of bills; effect* If the bills required under
7 par. (f) are introduced on or after February 1 of an even-numbered year and before
8 the next regular session of the legislature commences, as provided under s. 13.02 (2),
9 or if the bills cannot be introduced during this time period under the joint rules of
10 the legislature, unless either house adversely disposes of either bill, the committee
11 shall introduce the bills on the first day of the next regular session of the legislature.
12 If the committee is required to introduce the bills on the first day of the next regular
13 session, the rule to which the bills pertain remains suspended except as provided in
14 par. (i). If either house adversely disposes of either bill, the rule remains in effect and
15 the committee may not suspend it again. In this paragraph, "adversely disposes of"
16 has the meaning given under s. 227.19 (5) (g) (4) (d).

History: 1985 a. 182 ss. 1, 3, 50; 1987 a. 186; 2005 a. 249.

(END OF INSERT)

(INSERT A)

X 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.

5

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 authorized its promulgation.

(END OF INSERT)

X



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1583/8
GMM:kjf:rs

IN 8/31
Today

2011 BILL

(p. 3 only)

Regen

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

BILL

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)

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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.

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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

BILL

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

BILL

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)

Barman, Mike

From: Kovach, Robert

Sent: Monday, October 03, 2011 5:18 PM

To: LRB.Legal

Subject: Jacket Request lrb-1583

Please Jacket LRB-1583 for Senator Lasee's office.

Thanks,

Rob Kovach
Chief of Staff
Office of State Senator Frank Lasee
608-266-3512

10/4/2011