

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix C

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2011 LRB-0820 (For: DOA)

has been copied/added to the drafting file for


2011 LRB-0991 (For: Senator Fitzgerald)

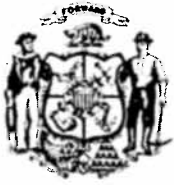
 Are These “Companion Bills” ?? ... No



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 01/21/2011 (Per: MGG & CMH)

 The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 12/29/2010 (Per: CMH)

A ☞ The 2011 drafting file for
LRB-0613

C ☞ The 2011 drafting file for
LRB-0615

**B ☞ The 2011 drafting file for
LRB-0614**

D ☞ The 2011 drafting file for
LRB-0616

☞ **Compile Draft – Appendix B**

has been copied/added to the drafting file for

2011 LRB-0820

(Jr1 Special Session Draft)

2011 DRAFTING REQUEST

Bill

Received: 12/01/2010

Received By: **gmalaise**

Wanted: **Today**

Companion to LRB:

For: **Administration**

By/Representing: **Kevin Moore**

May Contact:

Drafter: **gmalaise**

Subject: **Administrative Law**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **jennifer.kraus@wisconsin.gov**

Carbon copy (CC:) to: **david.schmiedicke@wisconsin.gov**
kevin.moore@wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Economic impact analysis of proposed rules

Instructions:

See attached

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 12/06/2010 | wjackson 12/07/2010 | | _____ | | | State |
| /1 | | | mduchek 12/07/2010 | _____ | lparisi 12/07/2010 | | State |
| /2 | gmalaise 12/20/2010 | wjackson 12/20/2010 | phenry 12/20/2010 | _____ | cduerst 12/20/2010 | | |

LRB-0614

12/20/2010 02:47:26 PM

Page 2

FE Sent For:

<END>

2011 DRAFTING REQUEST

Bill

Received: 12/01/2010

Received By: gmalaise

Wanted: Today

Companion to LRB:

For: Administration

By/Representing: Kevin Moore

May Contact:

Drafter: gmalaise

Subject: Administrative Law

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: jennifer.kraus@wisconsin.gov

Carbon copy (CC:) to: david.schmiedicke@wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Economic impact analysis of proposed rules

Instructions:

See attached

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 12/06/2010 | wjackson 12/07/2010 | | | | | State |
| /1 | | 1/2 Wlj 12/20 | mduchek 12/07/2010 | 12/20 | lparisi 12/07/2010 | | |

FE Sent For:

by
oo
pk
pk/ph
<END>

2011 DRAFTING REQUEST

Bill

Received: 12/01/2010

Received By: gmalaise

Wanted: Today

Companion to LRB:

For: Governor-elect 261-9184

By/Representing: Kevin Moore

May Contact:

Drafter: gmalaise

Subject: Administrative Law

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: kevin.moore@wisconsin.gov

Carbon copy (CC:) to: Dave Semelzke DOA
Jennifer Kraus DOA

Pre Topic:

No specific pre topic given

Topic:

Economic impact analysis of proposed rules

Instructions:

See attached

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> |
|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| 1? | gmalaise | 1 wly 12/6 | MD 12/7 | He 12/7 med | | | |

FE Sent For:

<END>

Malaise, Gordon

From: Moore, Kevin E - GOT [Kevin.Moore@wisconsin.gov]
Sent: Monday, November 29, 2010 1:41 PM
To: Malaise, Gordon
Cc: Champagne, Rick
Subject: Draft Request 2 of 4
Attachments: Cost Benefit Draft Language.pdf

Good Afternoon Gordon,

Here is drafting request # 2 related to the establishment of a cost-benefit analysis for administrative rules:

Thank you.

Kevin Moore
Policy Director
Office of Governor-Elect Scott Walker
608-261-9184
kevin.moore@wisconsin.gov
www.walkertransition.wi.gov



(3) Form of report. 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~~ the economic impact ~~report~~ analysis 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. The report shall also include all of the following:

Statutory Language

227.137 of the statutes is amended to read:

227.137 Economic impact reports analysis of proposed rules.

(1) In this section, "agency" ~~has the meaning given in s. 227.01(1)~~ means the departments of agriculture, trade, and consumer protection; commerce, natural resources, transportation, and workforce development.

(2) 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 legislature for review under s. 227.19 (2) ~~legislative council staff under s. 227.15;~~ a municipality, an association that represents a farm, labor, business, or professional group, or 3 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 shall prepare an economic impact report analysis for the proposed rule. ~~The agency shall prepare an economic impact report before submitting the proposed rule to the 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 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 legislature for review under s. 227.19 (2) if the secretary determines that all of the following apply:~~

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

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

(3) An economic impact report analysis shall contain information on the economic effect of the proposed rule on specific businesses, business sectors, utility ratepayers, and the state's economy as a whole. When preparing the report, the agency shall solicit information and advice from the department of commerce, ~~and from governmental units;~~ business associations, businesses, local governments and individuals that may be affected by the proposed rule. The agency may request information that is reasonably necessary for the preparation of an economic impact report analysis from other state agencies, governmental units, associations, businesses, and individuals. The economic impact report analysis shall include all of the following:

(a) An analysis and quantification of the policy problem; ~~including any risks to public health or the environment; that the rule is intending to address.~~ including comparisons with any corresponding policies of adjacent states and the federal government.

(b) An analysis and detailed quantification of the economic impact and compliance cost of the rule, including costs reasonably expected to be incurred by ~~or passed along to the state, governmental units, associations, businesses, and affected individuals.~~

(c) An analysis of actual and quantifiable benefits of the rule, including an assessment of whether the rule will be effective in addressing the policy problem it is intended to address ~~how the rule reduces the risks and addresses the problems that the rule is intended to address.~~

(d) An analysis of alternatives to the proposed rule, including the option of not promulgating the

proposed rule.

(e) A determination made in consultation with affected industries and business sectors on whether the rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs or the state's overall economic competitiveness.

(4) If changes to the proposed rule occur after any hearing required under s. 227.16, the agency shall revise the economic impact analysis to reflect the economic impacts of those changes. The agency shall submit the economic impact report analysis to the legislative council staff, to the department of administration, the governor, the co-chairs of joint committee for review of administrative rules, and to the presiding officers of both houses of the Legislature prior to the notification required under s. 227.19(2) and to the petitioner.

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

227.138 of the statutes is amended to read:

227.138 Department of administration review of proposed rules.

(1) In this section:

(a) "Agency" has the meaning given in s. ~~227.137~~ **(1) 227.01(1)**.

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

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

(2) If an economic impact report analysis ~~will be~~ prepared under s. 227.137 ~~(2)~~ regarding a proposed rule finds that the total compliance and implementation cost of a rule will exceed \$20 million, the department shall review the proposed rule and issue a report. The agency shall not submit a proposed rule to the 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:

(a) That the economic impact report and the analysis required under s. 227.137 ~~(3) are~~ **is** supported by ~~related~~ documentation contained or referenced in the economic impact report analysis.

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

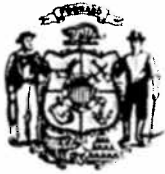
(c) That the proposed rule, including any administrative requirements, is consistent with and not duplicative of other state rules or federal regulations.

(d) That the agency has adequately documented the factual data and analytical methodologies that the agency used in support of the proposed rule and the related findings that support the regulatory approach that the agency chose for the proposed rule.

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

~~(4) No person is entitled to judicial review of any action taken by the department under this section.~~

227.19(3) of the statutes is amended to read:



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-061477
GMM.../.....

Wlj

1116
DNR
Today

Gen Cat

1 AN ACT ^{Gen Cat} ..., relating to: economic impact analyses of proposed rules and
2 emergency rules.

Analysis by the Legislative Reference Bureau

Under current law, before the Department of Agriculture, Trade and Consumer Protection (DATCP), the Department of Commerce (Commerce), the Department of Natural Resources (DNR), the Department of Transportation (DOT), or the Department of Workforce Development (DWD) may submit a proposed rule to the legislature for review, a municipality, an association that represents a farm, labor, business, or professional group, or five or more persons that would be affected by the proposed rule may submit a petition to the Department of Administration (DOA) requesting the secretary of administration (secretary) to direct DATCP, Commerce, DNR, DOT, or DWD to prepare an economic impact report for the proposed rule. The secretary may direct the preparation of an economic impact report in any case and must direct the preparation of such a report if: 1) the proposed rule would cost affected persons \$20,000,000 or more during each of the first five years after the rule's implementation to comply with the rule; or 2) the rule would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. An economic impact report, however, is not required for an emergency rule.

An economic impact report must contain information on the effect of the proposed rule on specific businesses, business sectors, and the state's economy and must include all of the following: (1) an analysis and quantification of the problem, including any risks to public health or the environment, that the rule is intending to address; 2) an analysis and quantification of the economic impact of the rule,

including costs reasonably expected to be incurred by the state; governmental units, associations, businesses, and affected individuals; and 3) an analysis of benefits of the rule, including how the rule reduces the risks and addresses the problems that the rule is intended to address. The agency must submit the economic impact report to the legislative council staff and DOA and may not submit the proposed rule to the legislature until DOA has issued a report on the proposed rule and the secretary has approved the proposed rule.

This bill requires *any* state agency to prepare an economic impact *analysis*, rather than a *report*, before the agency may submit *any* proposed rule to the *legislative council staff* for review, which must be done before a public hearing is held on the proposed rule or, if no public hearing is held, before the proposed rule is submitted to the legislature for review. The bill also requires an economic impact analysis to be prepared before a proposed emergency rule is filed with the Legislative Reference Bureau (LRB), which must be done before the emergency rule becomes valid.

The bill also requires certain additional information to be included in an economic impact analysis. Specifically, in addition to the information that must be included in an economic impact report under current law, an economic impact analysis must also include:

1. Information on the effect of a proposed rule on public utility ratepayers.
2. An analysis of alternative to the proposed rule, including the alternative of not promulgating the rule.
3. A determination made in consultation with the businesses and individuals that may be affected by the proposed rule as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.
4. Comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address the policy problem that the proposed rule is intending to address.
5. An assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.

In addition, the bill requires all of the following:

1. An agency to submit an economic impact statement not only to the legislative council staff and DOA as under current law but also to the governor and to the chief clerk of each house of the legislature for distribution to the presiding officers of each house and the cochairpersons of the Joint Committee for Review of Administrative Rules (JCRAR).
2. DOA to issue a report on a proposed rule, and the secretary to approve a proposed rule, if the economic impact analysis indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses and individuals as a result of the proposed rule.
3. An agency to prepare a revised economic impact analysis if a proposed rule is modified after the original economic impact analysis is submitted so as to significantly change the economic impact of the proposed rule.

4. The legislative council staff to provide on its Internet site an economic impact analysis submitted to the legislative council staff or a link to that analysis.

5. A notice of a public hearing on a proposed rule to include the economic impact analysis for the proposed rule and any report on the proposed rule prepared by DOA, or a summary of that analysis and report and a description of how the full analysis and report may be obtained from the agency at no charge.

6. An agency to prepare an economic impact analysis for a proposed emergency rule and to submit that analysis to DOA, to the governor, and to the chief clerks of each house of the legislature for distribution to the presiding officers of each house and to the cochairpersons of JCRAR. If the economic impact analysis indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses and individuals as a result of the proposed emergency rule, DOA must review the proposed rule and issue a report, and the agency may not file the proposed emergency rule with the LRB until the agency receives a copy of that report and the approval of the secretary.

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.** 227.137 (title) of the statutes is amended to read:

2 **227.137 (title) Economic impact reports analyses of proposed rules.**

3 History: 2003 a. 118; 2005 a. 249.

3 **SECTION 2.** 227.137 (1) of the statutes is repealed.

4 **SECTION 3.** 227.137 (2) (intro.) of the statutes is renumbered 227.137 (2) and
5 amended to read:

6 **227.137 (2)** ~~After an agency publishes a statement of the scope of a proposed~~
7 ~~rule under s. 227.135, and before the agency submits the proposed rule to the~~
8 ~~legislature for review under s. 227.19 (2), a municipality, an association that~~
9 ~~represents a farm, labor, business, or professional group, or 5 or more persons that~~
10 ~~would be directly and uniquely affected by the proposed rule may submit a petition~~
11 ~~to the department of administration asking that the secretary of administration~~
12 ~~direct the agency to prepare an economic impact report for the proposed rule. The~~

1 ~~An agency shall prepare an economic impact report analysis for a proposed rule~~
 2 ~~before submitting the proposed rule to the legislature for review under s. 227.19 (2)~~
 3 ~~if the secretary of administration directs the agency to prepare that report. The~~
 4 ~~secretary of administration may direct the agency to prepare an economic impact~~
 5 ~~report for the proposed rule before submitting the proposed rule to the legislature for~~
 6 ~~review under s. 227.19 (2). The secretary of administration shall direct the agency~~
 7 ~~to prepare an economic impact report for the proposed rule before submitting the~~
 8 ~~proposed rule to the legislature for review under s. 227.19 (2) if the secretary~~
 9 ~~determines that all of the following apply: legislative council staff under s. 227.15.~~

History: 2003 a. 118; 2005 a. 249.

10 **SECTION 4.** 227.137 (2) (a) of the statutes is repealed.

11 **SECTION 5.** 227.137 (2) (b) of the statutes is repealed.

12 **SECTION 6.** 227.137 (3) (intro.) of the statutes is amended to read:

13 227.137 (3) (intro.) An economic impact ~~report analysis~~ of a proposed rule shall
 14 contain information on the economic effect of the proposed rule on specific
 15 businesses, business sectors, public utility ratepayers, and the state's economy as a
 16 whole. When preparing the ~~report analysis~~, the agency shall solicit information and
 17 advice from ~~the department of commerce, and from governmental units,~~
 18 ~~associations,~~ businesses, associations representing businesses, local governmental
 19 units, and individuals that may be affected by the proposed rule. The agency may
 20 request information that is reasonably necessary for the preparation of an economic
 21 impact ~~report analysis~~ from other ~~state agencies, governmental units, associations,~~
 22 businesses, associations, local governmental units, and individuals and from other
 23 agencies. The economic impact report shall include all of the following:

History: 2003 a. 118; 2005 a. 249.

24 **SECTION 7.** 227.137 (3) (a) of the statutes is amended to read:

1 227.137 (3) (a) An analysis and quantification of the policy problem, including
2 any risks to public health or the environment, that the proposed rule is intending to
3 address, including comparisons with the approaches used by the federal government
4 and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem.

5 History: 2003 a. 118; 2005 a. 249.

5 SECTION 8. 227.137 (3) (b) of the statutes is amended to read:

6 227.137 (3) (b) An analysis and detailed quantification of the economic impact
7 of the proposed rule, including the implementation and compliance costs that are
8 reasonably expected to be incurred by the state, governmental units, associations,
9 or passed along to the businesses, and affected individuals that may be affected by
10 the proposed rule.

11 History: 2003 a. 118; 2005 a. 249.

11 SECTION 9. 227.137 (3) (c) of the statutes is amended to read:

12 227.137 (3) (c) An analysis of the actual and quantifiable benefits of the
13 proposed rule, including how the rule reduces the risks and addresses the problems
14 an assessment of how effective the proposed rule will be in addressing the policy
15 problem that the rule is intended to address.

16 History: 2003 a. 118; 2005 a. 249.

16 SECTION 10. ~~227.138~~ ^{227.137} (3) (d) of the statutes is created to read:

17 ~~227.138~~ ^{227.137} (3) (d) An analysis of alternatives to the proposed rule, including the
18 alternative of not promulgating the proposed rule.

19 SECTION 11. ~~227.138~~ ^{227.137} (3) (e) of the statutes is created to read:

20 ~~227.138~~ ^{227.137} (3) (e) A determination made in consultation with the businesses and
21 individuals ~~that~~ ^{STET} may be affected by the proposed rule as to whether the proposed rule
22 would adversely affect in a material way the economy, a sector of the economy,
23 productivity, jobs, or the overall economic competitiveness of this state.

24 SECTION 12. 227.137 (4) of the statutes is amended to read:

1 227.137 (4) ~~The On the same day that the agency shall submit~~ submits the
2 economic impact report analysis to the legislative council staff, under s. 227.15 (1),
3 ~~the agency shall also submit that analysis~~ to the department of administration, and
4 ~~to the petitioner to the governor, and to the chief clerks of each house of the~~
5 ~~legislature, who shall distribute the analysis to the presiding officers of their~~
6 ~~respective houses and to the cochairpersons of the joint committee for review of~~
7 ~~administrative rules. If a proposed rule is modified after the economic impact~~
8 ~~analysis is submitted under this subsection so that the economic impact of the~~
9 ~~proposed rule is significantly changed, the agency shall prepare a revised economic~~
10 ~~impact analysis for the proposed rule as modified. A revised economic impact~~
11 ~~analysis shall be prepared and submitted in the same manner as an original~~
12 ~~economic impact analysis is prepared and submitted.~~

History: 2003 a. 118; 2005 a. 249.

13 **SECTION 13.** 227.137 (5) of the statutes is repealed.

14 **SECTION 14.** 227.138 (title) and (1) of the statutes are repealed.

15 **SECTION 15.** 227.138 (2) (intro.) of the statutes is renumbered 227.137 (6)
16 (intro.) and amended to read:

17 227.137 (6) (intro.) If an economic impact ~~report will be prepared under s.~~
18 ~~227.137 (2)~~ analysis regarding a proposed rule indicates that a total of \$20,000,000
19 or more in implementation and compliance costs are reasonably expected to be
20 incurred by or passed along to businesses and individuals as a result of the proposed
21 rule, the department of administration shall review the proposed rule and issue a
22 report. The agency ~~shall~~ may not submit a proposed rule to the legislature for review
23 under s. 227.19 (2) until the agency receives a copy of the department's report and

1 the approval of the secretary of administration. The report shall include all of the
2 following findings:

History: 2003 a. 118; 2005 a. 249.

3 **SECTION 16.** 227.138 (2) (a) of the statutes is renumbered 227.138 (6) (a) and
4 amended to read:

5 227.138 (6) (a) That the economic impact ~~report and the analysis required~~
6 ~~under s. 227.137 (3) are~~ is supported by related documentation contained or
7 referenced in the economic impact ~~report~~ analysis. ✓

History: 2003 a. 118; 2005 a. 249.

8 **SECTION 17.** 227.138 (2) (b) of the statutes is renumbered 227.137 (6) (b). ✓

9 **SECTION 18.** 227.138 (2) (c) of the statutes is renumbered 227.137 (6) (c). ✓

10 **SECTION 19.** 227.138 (2) (d) of the statutes is renumbered 227.137 (6) (d). ✓

11 **SECTION 20.** 227.138 (3) of the statutes is renumbered 227.137 (7) and amended
12 to read:

13 227.137 (7) Before issuing a report under sub. (2) (6), ✓ the department of
14 administration may return a proposed rule to the agency for further consideration
15 and revision with a written explanation of why the proposed rule is being returned.
16 If the agency head disagrees with the department's reasons for returning the
17 proposed rule, the agency head shall so notify the department in writing. The
18 secretary of administration shall approve the proposed rule when the agency has
19 adequately addressed the issues raised during the department's review of the rule.

History: 2003 a. 118; 2005 a. 249.

20 **SECTION 21.** 227.138 (4) ✓ of the statutes is repealed.

21 **SECTION 22.** 227.14 (2) (a) 6. ✓ of the statutes is amended to read:

22 227.14 (2) (a) 6. Any analysis and supporting documentation that the agency
23 used in support of the agency's determination of the rule's effect on small businesses

1 under s. 227.114 or that was used when the agency prepared an economic impact
2 report analysis under s. 227.137 (3).[↓]

3 **History:** 1985 a. 182; 1987 a. 22, 253; 1993 a. 399; 1995 a. 106; 1999 a. 9; 2003 a. 118, 145; 2005 a. 249; 2007 a. 20 ss. 2997de to 2997ff, 9121 (6) (a).

3 **SECTION 23.** 227.15 (1) of the statutes is amended to read:

4 227.15 (1) SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. Prior to a public hearing
5 on a proposed rule or, if no public hearing is required, prior to notice under s. 227.19,
6 an agency shall submit the proposed rule to the legislative council staff for review.
7 The proposed rule shall be in the form required under s. 227.14 (1), and shall include
8 the material required under s. 227.14 (2) ~~to (4), (3), and (4)~~ ^X and the economic impact
9 analysis required under s. 227.137 (2).[↓] An agency may not hold a public hearing on
10 a proposed rule or give notice under s. 227.19 until after it has received a written
11 report of the legislative council staff review of the proposed rule or until after the
12 initial review period of 20 working days under sub. (2) (intro.), whichever comes first.
13 An agency may give notice of a public hearing prior to receipt of the legislative council
14 staff report. This subsection does not apply to rules promulgated under s. 227.24.

15 **History:** 1985 a. 182; 1987 a. 186; 1989 a. 31; 2001 a. 104; 2003 a. 145; 2003[↓] a. 249; 2007 a. 20.

15 **SECTION 24.** 227.15 (1m) (bm) of the statutes is created to read:

16 227.15 (1m) (bm) The economic impact analysis required under s. 227.137 (2).[↓]

17 **SECTION 25.** 227.17 (3) (em) [↓] of the statutes is created to read:

18 227.17 (3) (em) The economic impact analysis required under s. 227.137 (2)[↓] and
19 any report prepared by the department of administration under s. 227.137 (6),[↓] or a
20 summary of that analysis and report and a description of how a copy of the full
21 analysis and report may be obtained from the agency at no charge.

22 **SECTION 26.** 227.19 (3) (intro.)[↓] of the statutes is amended to read:

23 227.19 (3) FORM OF REPORT. (intro.) The report[↓] required under sub. (2) shall be
24 in writing and shall include the proposed rule in the form specified in s. 227.14 (1),

1 the material specified in s. 227.14 (2) to ~~(3)~~ and (4), a copy of any economic impact
 2 ~~report analysis~~ prepared by the agency under s. 227.137 (2), a copy of any report
 3 prepared by the department of administration under s. ~~227.138~~ 227.137 (6), a copy
 4 of any energy impact report received from the public service commission under s.
 5 227.117 (2), and a copy of any recommendations of the legislative council staff. The
 6 report shall also include all of the following:

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.

7 **SECTION 27. 227.24 (3g)** of the statutes is created to read:

8 227.24 (3g) ECONOMIC IMPACT ANALYSIS. Before filing a proposed emergency rule
 9 under sub. (3), an agency shall prepare an economic impact analysis for the proposed
 10 emergency rule in the manner required under s. 227.137 (3) and shall submit that
 11 analysis to the department of administration, to the governor, and to the chief clerks
 12 of each house of the legislature, who shall distribute the analysis to the presiding
 13 officers of their respective houses and to the cochairpersons of the joint committee
 14 for review of administrative rules. If the economic impact analysis indicates that ~~the~~
 15 a total of \$20,000,000 or more in implementation and compliance costs are
 16 reasonably expected to be incurred by or passed along to businesses and individuals
 17 as a result of the proposed emergency rule, the department of administration shall
 18 review the proposed rule and issue a report under s. 227.137 (6). The agency may
 19 not file the proposed emergency rule until the agency receives a copy of the
 20 department of administration's report and the approval of the secretary of
 21 administration under s. 227.137 (7).

22 **SECTION 9355. Initial applicability; Other.**

23 (1) ECONOMIC IMPACT ANALYSES. The treatment of sections 227.137 (title), (1), (2)
 24 (intro.), (a) and (b), (3) (intro.), (a), (b), (c), (d), and (e), (4), and (5), 227.138 (title), (1),

SECTION 9355

1 (2) (intro.), (a), (b), (c), and (d), (3), and (4), 227.14 (2) (a) 6., 227.15 (1) and (1m) (bm),
2 227.17 (3) (em), 227.19 (3) (intro.), and 227.24 (3g) of the statutes first applies to a
3 proposed administrative rule submitted to the legislative council staff under section
4 227.15 of the statutes, as affected by this act, and to a proposed emergency rule filed
5 with the legislative reference bureau under section 227.24 (3) of the statutes on the
6 effective date of this subsection.

7 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0614/1dn
GMM.../...
Wlj

Date

Kevin:

In reviewing this draft, please note all of the following:

1. The submitted language calls for repealing s. 227.137 (5), which provides that s. 227.137 relating to economic impact analyses does not apply to emergency rules, thereby implying that an economic impact analysis is required for an emergency rule. The submitted language, however, does not spell out how exactly the economic impact analysis requirement is supposed to fit into the emergency rule process. Sections 227.137 and 227.19 (3) (intro.), as amended by this draft, provide no guidance as emergency rules are not submitted to the legislative council staff or the legislature for review prior to their promulgation.

Accordingly, this draft creates s. 227.24 (3g)[✓] to require that an economic impact analysis be prepared and submitted prior to the filing of a proposed emergency rule with the LRB. The draft also provides that if a DOA report is required, the agency may not promulgate the emergency rule until DOA has issued its report and the secretary of administration has approved the emergency rule.

2. Because under the draft the economic impact analysis is required to be submitted to the legislative council staff under s. 227.15 rather than to the legislature under s. 227.19 (2) as under current law, the economic impact analysis becomes available much earlier in the rule-making process.

Accordingly, this draft requires the legislative council staff to make the economic impact analysis available on its Internet site under s. 227.15 (1m)[✓] and requires the economic impact analysis to be published with the notice of public hearing under s. 227.17 (3)[✓].

3. The draft makes several small, nonsubstantive variations in the submitted language in the interest of internal consistency with other provisions of the draft and current law.

If you want to incorporate economic impact analyses into the emergency rule process by some other means, if you do not want the economic analysis to be posted on the Internet or published with the notice of public hearing, or if you do not want any of the other variations made by this draft, please advise and I will redraft as requested.

If you have any questions about the draft, please do not hesitate to contact me at the phone number or e-mail address listed below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0614/1dn
GMM:wlj:md

December 7, 2010

Kevin:

In reviewing this draft, please note all of the following:

1. The submitted language calls for repealing s. 227.137 (5), which provides that s. 227.137 relating to economic impact analyses does not apply to emergency rules, thereby implying that an economic impact analysis is required for an emergency rule. The submitted language, however, does not spell out how exactly the economic impact analysis requirement is supposed to fit into the emergency rule process. Sections 227.137 and 227.19 (3) (intro.), as amended by this draft, provide no guidance as emergency rules are not submitted to the legislative council staff or the legislature for review prior to their promulgation.

Accordingly, this draft creates s. 227.24 (3g) to require that an economic impact analysis be prepared and submitted prior to the filing of a proposed emergency rule with the LRB. The draft also provides that if a DOA report is required, the agency may not promulgate the emergency rule until DOA has issued its report and the secretary of administration has approved the emergency rule.

2. Because under the draft the economic impact analysis is required to be submitted to the legislative council staff under s. 227.15 rather than to the legislature under s. 227.19 (2) as under current law, the economic impact analysis becomes available much earlier in the rule-making process.

Accordingly, this draft requires the legislative council staff to make the economic impact analysis available on its Internet site under s. 227.15 (1m) and requires the economic impact analysis to be published with the notice of public hearing under s. 227.17 (3).

3. The draft makes several small, nonsubstantive variations in the submitted language in the interest of internal consistency with other provisions of the draft and current law.

If you want to incorporate economic impact analyses into the emergency rule process by some other means, if you do not want the economic analysis to be posted on the Internet or published with the notice of public hearing, or if you do not want any of the other variations made by this draft, please advise and I will redraft as requested.

If you have any questions about the draft, please do not hesitate to contact me at the phone number or e-mail address listed below.

Gordon M. Malaise
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STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

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State of Wisconsin
2011 - 2012 LEGISLATURE

In 12/20
Today



LRB-0614/1
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2011 BILL

Regen

1 **AN ACT** *to repeal* 227.137 (1), 227.137 (2) (a), 227.137 (2) (b), 227.137 (5), 227.138
2 (title) and (1) and 227.138 (4); *to renumber* 227.138 (2) (b), 227.138 (2) (c) and
3 227.138 (2) (d); *to renumber and amend* 227.137 (2) (intro.), 227.138 (2)
4 (intro.), 227.138 (2) (a) and 227.138 (3); *to amend* 227.137 (title), 227.137 (3)
5 (intro.), 227.137 (3) (a), 227.137 (3) (b), 227.137 (3) (c), 227.137 (4), 227.14 (2)
6 (a) 6., 227.15 (1) and 227.19 (3) (intro.); and *to create* 227.137 (3) (d), 227.137
7 (3) (e), 227.15 (1m) (bm), 227.17 (3) (em) and 227.24 (3g) of the statutes;
8 **relating to:** economic impact analyses of proposed rules and emergency rules.

Analysis by the Legislative Reference Bureau

Under current law, before the Department of Agriculture, Trade and Consumer Protection (DATCP), the Department of Commerce (Commerce), the Department of Natural Resources (DNR), the Department of Transportation (DOT), or the Department of Workforce Development (DWD) may submit a proposed rule to the legislature for review, a municipality, an association that represents a farm, labor, business, or professional group, or five or more persons that would be affected by the proposed rule may submit a petition to the Department of Administration (DOA) requesting the secretary of administration (secretary) to direct DATCP, Commerce, DNR, DOT, or DWD to prepare an economic impact report for the proposed rule. The

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secretary may direct the preparation of an economic impact report in any case and must direct the preparation of such a report if: 1) the proposed rule would cost affected persons \$20,000,000 or more during each of the first five years after the rule's implementation to comply with the rule; or 2) the rule would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. An economic impact report, however, is not required for an emergency rule.

An economic impact report must contain information on the effect of the proposed rule on specific businesses, business sectors, and the state's economy and must include all of the following: 1) an analysis and quantification of the problem, including any risks to public health or the environment, that the rule is intending to address; 2) an analysis and quantification of the economic impact of the rule, including costs reasonably expected to be incurred by the state, governmental units, associations, businesses, and affected individuals; and 3) an analysis of benefits of the rule, including how the rule reduces the risks and addresses the problems that the rule is intended to address. The agency must submit the economic impact report to the legislative council staff and DOA and may not submit the proposed rule to the legislature until DOA has issued a report on the proposed rule and the secretary has approved the proposed rule.

This bill requires *any* state agency to prepare an economic impact *analysis*, rather than a *report*, before the agency may submit *any* proposed rule to the *legislative council staff* for review, which must be done before a public hearing is held on the proposed rule or, if no public hearing is held, before the proposed rule is submitted to the legislature for review. The bill also requires an economic impact analysis to be prepared before a proposed emergency rule is filed with the Legislative Reference Bureau (LRB), which must be done before the emergency rule becomes valid.

The bill also requires certain additional information to be included in an economic impact analysis. Specifically, in addition to the information that must be included in an economic impact report under current law, an economic impact analysis must also include:

1. Information on the effect of a proposed rule on public utility ratepayers.
2. An analysis of alternative to the proposed rule, including the alternative of not promulgating the rule.
3. A determination made in consultation with the businesses and individuals that may be affected by the proposed rule as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.
4. Comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address the policy problem that the proposed rule is intending to address.
5. An assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.

In addition, the bill requires all of the following:

and, if the approach chosen by the agency to address that policy problem is different from those approaches, a statement as to why the agency chose a different approach.

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1. An agency to submit an economic impact statement not only to the legislative council staff and DOA as under current law but also to the governor and to the chief clerk of each house of the legislature for distribution to the presiding officers of each house and the cochairpersons of the Joint Committee for Review of Administrative Rules (JCRAR).

2. DOA to issue a report on a proposed rule, and the secretary to approve a proposed rule, if the economic impact analysis indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses and individuals as a result of the proposed rule.

3. An agency to prepare a revised economic impact analysis if a proposed rule is modified after the original economic impact analysis is submitted so as to significantly change the economic impact of the proposed rule.

4. The legislative council staff to provide on its Internet site an economic impact analysis submitted to the legislative council staff or a link to that analysis.

5. A notice of a public hearing on a proposed rule to include the economic impact analysis for the proposed rule and any report on the proposed rule prepared by DOA, or a summary of that analysis and report and a description of how the full analysis and report may be obtained from the agency at no charge.

6. An agency to prepare an economic impact analysis for a proposed emergency rule and to submit that analysis to DOA, to the governor, and to the chief clerks of each house of the legislature for distribution to the presiding officers of each house and to the cochairpersons of JCRAR. If the economic impact analysis indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses and individuals as a result of the proposed emergency rule, DOA must review the proposed rule and issue a report, and the agency may not file the proposed emergency rule with the LRB until the agency receives a copy of that report and the approval of the secretary.

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.** 227.137 (title) of the statutes is amended to read:

2 **227.137 (title) Economic impact reports analyses of proposed rules.**

3 **SECTION 2.** 227.137 (1) of the statutes is repealed.

4 **SECTION 3.** 227.137 (2) (intro.) of the statutes is renumbered 227.137 (2) and
5 amended to read:

BILL

SECTION 3

1 227.137 (2) ~~After an agency publishes a statement of the scope of a proposed~~
2 ~~rule under s. 227.135, and before the agency submits the proposed rule to the~~
3 ~~legislature for review under s. 227.19 (2), a municipality, an association that~~
4 ~~represents a farm, labor, business, or professional group, or 5 or more persons that~~
5 ~~would be directly and uniquely affected by the proposed rule may submit a petition~~
6 ~~to the department of administration asking that the secretary of administration~~
7 ~~direct the agency to prepare an economic impact report for the proposed rule. The~~
8 An agency shall prepare an economic impact report analysis for a proposed rule
9 ~~before submitting the proposed rule to the legislature for review under s. 227.19 (2)~~
10 ~~if the secretary of administration directs the agency to prepare that report. The~~
11 ~~secretary of administration may direct the agency to prepare an economic impact~~
12 ~~report for the proposed rule before submitting the proposed rule to the legislature for~~
13 ~~review under s. 227.19 (2). The secretary of administration shall direct the agency~~
14 ~~to prepare an economic impact report for the proposed rule before submitting the~~
15 ~~proposed rule to the legislature for review under s. 227.19 (2) if the secretary~~
16 ~~determines that all of the following apply: legislative council staff under s. 227.15.~~

17 SECTION 4. 227.137 (2) (a) of the statutes is repealed.

18 SECTION 5. 227.137 (2) (b) of the statutes is repealed.

19 SECTION 6. 227.137 (3) (intro.) of the statutes is amended to read:

20 227.137 (3) (intro.) An economic impact report analysis of a proposed rule shall
21 contain information on the economic effect of the proposed rule on specific
22 businesses, business sectors, public utility ratepayers, and the state's economy as a
23 whole. When preparing the report analysis, the agency shall solicit information and
24 advice from the department of commerce, and from governmental units,
25 associations, businesses, associations representing businesses, local governmental

Not

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Problem
and if the approach chosen by the agency to address that policy is different from those approaches, a statement as to why the agency chose a different approach

1 units, and individuals that may be affected by the proposed rule. The agency may
2 request information that is reasonably necessary for the preparation of an economic
3 impact ~~report~~ analysis from other ~~state agencies, governmental units, associations,~~
4 ~~businesses, associations, local governmental units,~~ and individuals ~~and from other~~
5 ~~agencies~~. The economic impact report shall include all of the following:

6 SECTION 7. 227.137 (3) (a) of the statutes is amended to read:

7 227.137 (3) (a) An analysis and quantification of the policy problem, including
8 ~~any risks to public health or the environment,~~ that the proposed rule is intending to
9 address, including comparisons with the approaches used by the federal government
10 and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem.

11 SECTION 8. 227.137 (3) (b) of the statutes is amended to read:

12 227.137 (3) (b) An analysis and detailed quantification of the economic impact
13 of the proposed rule, including the implementation and compliance costs that are
14 reasonably expected to be incurred by the state, governmental units, associations,
15 or passed along to the businesses, and affected individuals that may be affected by
16 the proposed rule.

17 SECTION 9. 227.137 (3) (c) of the statutes is amended to read:

18 227.137 (3) (c) An analysis of the actual and quantifiable benefits of the
19 proposed rule, including how the rule reduces the risks and addresses the problems
20 an assessment of how effective the proposed rule will be in addressing the policy
21 problem that the rule is intended to address.

22 SECTION 10. 227.137 (3) (d) of the statutes is created to read:

23 227.137 (3) (d) An analysis of alternatives to the proposed rule, including the
24 alternative of not promulgating the proposed rule.

25 SECTION 11. 227.137 (3) (e) of the statutes is created to read:

BILL

1 227.137 (3) (e) A determination made in consultation with the businesses and
2 individuals that may be affected by the proposed rule as to whether the proposed rule
3 would adversely affect in a material way the economy, a sector of the economy,
4 productivity, jobs, or the overall economic competitiveness of this state.

5 **SECTION 12.** 227.137 (4) of the statutes is amended to read:

6 227.137 (4) ~~The~~ On the same day that the agency shall submit ~~submits~~ the
7 economic impact ~~report~~ analysis to the legislative council staff, under s. 227.15 (1),
8 the agency shall also submit that analysis to the department of administration, and
9 to the petitioner to the governor, and to the chief clerks of each house of the
10 legislature, who shall distribute the analysis to the presiding officers of their
11 respective houses and to the cochairpersons of the joint committee for review of
12 administrative rules. If a proposed rule is modified after the economic impact
13 analysis is submitted under this subsection so that the economic impact of the
14 proposed rule is significantly changed, the agency shall prepare a revised economic
15 impact analysis for the proposed rule as modified. A revised economic impact
16 analysis shall be prepared and submitted in the same manner as an original
17 economic impact analysis is prepared and submitted.

18 **SECTION 13.** 227.137 (5) of the statutes is repealed.

19 **SECTION 14.** 227.138 (title) and (1) of the statutes are repealed.

20 **SECTION 15.** 227.138 (2) (intro.) of the statutes is renumbered 227.137 (6)
21 (intro.) and amended to read:

22 227.137 (6) (intro.) If an economic impact ~~report~~ will be prepared under s.
23 227.137 (2) analysis regarding a proposed rule indicates that a total of \$20,000,000
24 or more in implementation and compliance costs are reasonably expected to be
25 incurred by or passed along to businesses and individuals as a result of the proposed

BILL

1 rule, the department of administration shall review the proposed rule and issue a
2 report. The agency ~~shall~~ may not submit a proposed rule to the legislature for review
3 under s. 227.19 (2) until the agency receives a copy of the department's report and
4 the approval of the secretary of administration. The report shall include all of the
5 following findings:

6 **SECTION 16.** 227.138 (2) (a) of the statutes is renumbered 227.138 (6) (a) and
7 amended to read:

8 227.138 (6) (a) That the economic impact ~~report and the analysis required~~
9 ~~under s. 227.137 (3) are~~ is supported by related documentation contained or
10 referenced in the economic impact ~~report~~ analysis.

11 **SECTION 17.** 227.138 (2) (b) of the statutes is renumbered 227.137 (6) (b).

12 **SECTION 18.** 227.138 (2) (c) of the statutes is renumbered 227.137 (6) (c).

13 **SECTION 19.** 227.138 (2) (d) of the statutes is renumbered 227.137 (6) (d).

14 **SECTION 20.** 227.138 (3) of the statutes is renumbered 227.137 (7) and amended
15 to read:

16 227.137 (7) Before issuing a report under sub. ~~(2)~~ (6), the department of
17 administration may return a proposed rule to the agency for further consideration
18 and revision with a written explanation of why the proposed rule is being returned.
19 If the agency head disagrees with the department's reasons for returning the
20 proposed rule, the agency head shall so notify the department in writing. The
21 secretary of administration shall approve the proposed rule when the agency has
22 adequately addressed the issues raised during the department's review of the rule.

23 **SECTION 21.** 227.138 (4) of the statutes is repealed.

24 **SECTION 22.** 227.14 (2) (a) 6. of the statutes is amended to read:

BILL

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

5 **SECTION 23.** 227.15 (1) of the statutes is amended to read:

6 227.15 (1) SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. Prior to a public hearing
7 on a proposed rule or, if no public hearing is required, prior to notice under s. 227.19,
8 an agency shall submit the proposed rule to the legislative council staff for review.
9 The proposed rule shall be in the form required under s. 227.14 (1), and shall include
10 the material required under s. 227.14 (2) ~~to (4), (3), and (4) and the economic impact~~
11 ~~analysis required under s. 227.137 (2)~~. An agency may not hold a public hearing on
12 a proposed rule or give notice under s. 227.19 until after it has received a written
13 report of the legislative council staff review of the proposed rule or until after the
14 initial review period of 20 working days under sub. (2) (intro.), whichever comes first.
15 An agency may give notice of a public hearing prior to receipt of the legislative council
16 staff report. This subsection does not apply to rules promulgated under s. 227.24.

17 **SECTION 24.** 227.15 (1m) (bm) of the statutes is created to read:

18 227.15 (1m) (bm) The economic impact analysis required under s. 227.137 (2).

19 **SECTION 25.** 227.17 (3) (em) of the statutes is created to read:

20 227.17 (3) (em) The economic impact analysis required under s. 227.137 (2) and
21 any report prepared by the department of administration under s. 227.137 (6), or a
22 summary of that analysis and report and a description of how a copy of the full
23 analysis and report may be obtained from the agency at no charge.

24 **SECTION 26.** 227.19 (3) (intro.) of the statutes is amended to read:

BILL

1 227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be
2 in writing and shall include the proposed rule in the form specified in s. 227.14 (1),
3 the material specified in s. 227.14 (2) ~~to, (3), and~~ (4), a copy of any economic impact
4 report ~~analysis~~ prepared by the agency under s. 227.137 (2), a copy of any report
5 prepared by the department of administration under s. ~~227.138~~ 227.137 (6), a copy
6 of any energy impact report received from the public service commission under s.
7 227.117 (2), and a copy of any recommendations of the legislative council staff. The
8 report shall also include all of the following:

9 **SECTION 27.** 227.24 (3g) of the statutes is created to read:

10 227.24 (3g) ECONOMIC IMPACT ANALYSIS. Before filing a proposed emergency rule
11 under sub. (3), an agency shall prepare an economic impact analysis for the proposed
12 emergency rule in the manner required under s. 227.137 (3) and shall submit that
13 analysis to the department of administration, to the governor, and to the chief clerks
14 of each house of the legislature, who shall distribute the analysis to the presiding
15 officers of their respective houses and to the cochairpersons of the joint committee
16 for review of administrative rules. If the economic impact analysis indicates that a
17 total of \$20,000,000 or more in implementation and compliance costs are reasonably
18 expected to be incurred by or passed along to businesses and individuals as a result
19 of the proposed emergency rule, the department of administration shall review the
20 proposed rule and issue a report under s. 227.137 (6). The agency may not file the
21 proposed emergency rule until the agency receives a copy of the department of
22 administration's report and the approval of the secretary of administration under s.
23 227.137 (7).

24 **SECTION 9355. Initial applicability; Other.**

BILL

1 (1) ECONOMIC IMPACT ANALYSES. The treatment of sections 227.137 (title), (1), (2)
2 (intro.), (a) and (b), (3) (intro.), (a), (b), (c), (d), and (e), (4), and (5), 227.138 (title), (1),
3 (2) (intro.), (a), (b), (c), and (d), (3), and (4), 227.14 (2) (a) 6., 227.15 (1) and (1m) (bm),
4 227.17 (3) (em), 227.19 (3) (intro.), and 227.24 (3g) of the statutes first applies to a
5 proposed administrative rule submitted to the legislative council staff under section
6 227.15 of the statutes, as affected by this act, and to a proposed emergency rule filed
7 with the legislative reference bureau under section 227.24 (3) of the statutes on the
8 effective date of this subsection.

9

(END)



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0614/2
GMM:wlj:ph

2011 BILL

1 **AN ACT to repeal** 227.137 (1), 227.137 (2) (a), 227.137 (2) (b), 227.137 (5), 227.138
2 (title) and (1) and 227.138 (4); **to renumber** 227.138 (2) (b), 227.138 (2) (c) and
3 227.138 (2) (d); **to renumber and amend** 227.137 (2) (intro.), 227.138 (2)
4 (intro.), 227.138 (2) (a) and 227.138 (3); **to amend** 227.137 (title), 227.137 (3)
5 (intro.), 227.137 (3) (a), 227.137 (3) (b), 227.137 (3) (c), 227.137 (4), 227.14 (2)
6 (a) 6., 227.15 (1) and 227.19 (3) (intro.); and **to create** 227.137 (3) (d), 227.137
7 (3) (e), 227.15 (1m) (bm), 227.17 (3) (em) and 227.24 (3g) of the statutes;
8 **relating to:** economic impact analyses of proposed rules and emergency rules.

Analysis by the Legislative Reference Bureau

Under current law, before the Department of Agriculture, Trade and Consumer Protection (DATCP), the Department of Commerce (Commerce), the Department of Natural Resources (DNR), the Department of Transportation (DOT), or the Department of Workforce Development (DWD) may submit a proposed rule to the legislature for review, a municipality, an association that represents a farm, labor, business, or professional group, or five or more persons that would be affected by the proposed rule may submit a petition to the Department of Administration (DOA) requesting the secretary of administration (secretary) to direct DATCP, Commerce, DNR, DOT, or DWD to prepare an economic impact report for the proposed rule. The

BILL

secretary may direct the preparation of an economic impact report in any case and must direct the preparation of such a report if: 1) the proposed rule would cost affected persons \$20,000,000 or more during each of the first five years after the rule's implementation to comply with the rule; or 2) the rule would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. An economic impact report, however, is not required for an emergency rule.

An economic impact report must contain information on the effect of the proposed rule on specific businesses, business sectors, and the state's economy and must include all of the following: 1) an analysis and quantification of the problem, including any risks to public health or the environment, that the rule is intending to address; 2) an analysis and quantification of the economic impact of the rule, including costs reasonably expected to be incurred by the state, governmental units, associations, businesses, and affected individuals; and 3) an analysis of benefits of the rule, including how the rule reduces the risks and addresses the problems that the rule is intended to address. The agency must submit the economic impact report to the legislative council staff and DOA and may not submit the proposed rule to the legislature until DOA has issued a report on the proposed rule and the secretary has approved the proposed rule.

This bill requires *any* state agency to prepare an economic impact *analysis*, rather than a *report*, before the agency may submit *any* proposed rule to the *legislative council staff* for review, which must be done before a public hearing is held on the proposed rule or, if no public hearing is held, before the proposed rule is submitted to the legislature for review. The bill also requires an economic impact analysis to be prepared before a proposed emergency rule is filed with the Legislative Reference Bureau (LRB), which must be done before the emergency rule becomes valid.

The bill also requires certain additional information to be included in an economic impact analysis. Specifically, in addition to the information that must be included in an economic impact report under current law, an economic impact analysis must also include:

1. Information on the effect of a proposed rule on public utility ratepayers.
2. An analysis of alternative to the proposed rule, including the alternative of not promulgating the rule.
3. A determination made in consultation with the businesses and individuals that may be affected by the proposed rule as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.
4. Comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address the policy problem that the proposed rule is intending to address and, if the approach chosen by the agency to address that policy problem is different from those approaches, a statement as to why the agency chose a different approach.

BILL

5. An assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.

In addition, the bill requires all of the following:

1. An agency to submit an economic impact statement not only to the legislative council staff and DOA as under current law but also to the governor and to the chief clerk of each house of the legislature for distribution to the presiding officers of each house and the cochairpersons of the Joint Committee for Review of Administrative Rules (JCRAR).

2. DOA to issue a report on a proposed rule, and the secretary to approve a proposed rule, if the economic impact analysis indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses and individuals as a result of the proposed rule.

3. An agency to prepare a revised economic impact analysis if a proposed rule is modified after the original economic impact analysis is submitted so as to significantly change the economic impact of the proposed rule.

4. The legislative council staff to provide on its Internet site an economic impact analysis submitted to the legislative council staff or a link to that analysis.

5. A notice of a public hearing on a proposed rule to include the economic impact analysis for the proposed rule and any report on the proposed rule prepared by DOA, or a summary of that analysis and report and a description of how the full analysis and report may be obtained from the agency at no charge.

6. An agency to prepare an economic impact analysis for a proposed emergency rule and to submit that analysis to DOA, to the governor, and to the chief clerks of each house of the legislature for distribution to the presiding officers of each house and to the cochairpersons of JCRAR. If the economic impact analysis indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses and individuals as a result of the proposed emergency rule, DOA must review the proposed rule and issue a report, and the agency may not file the proposed emergency rule with the LRB until the agency receives a copy of that report and the approval of the secretary.

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.** 227.137 (title) of the statutes is amended to read:
2 **227.137** (title) **Economic impact reports analyses** of proposed rules.
3 **SECTION 2.** 227.137 (1) of the statutes is repealed.

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1 **SECTION 3.** 227.137 (2) (intro.) of the statutes is renumbered 227.137 (2) and
2 amended to read:

3 ~~227.137 (2) After an agency publishes a statement of the scope of a proposed~~
4 ~~rule under s. 227.135, and before the agency submits the proposed rule to the~~
5 ~~legislature for review under s. 227.19 (2), a municipality, an association that~~
6 ~~represents a farm, labor, business, or professional group, or 5 or more persons that~~
7 ~~would be directly and uniquely affected by the proposed rule may submit a petition~~
8 ~~to the department of administration asking that the secretary of administration~~
9 ~~direct the agency to prepare an economic impact report for the proposed rule. The~~
10 ~~An agency shall prepare an economic impact report analysis for a proposed rule~~
11 ~~before submitting the proposed rule to the legislature for review under s. 227.19 (2)~~
12 ~~if the secretary of administration directs the agency to prepare that report. The~~
13 ~~secretary of administration may direct the agency to prepare an economic impact~~
14 ~~report for the proposed rule before submitting the proposed rule to the legislature for~~
15 ~~review under s. 227.19 (2). The secretary of administration shall direct the agency~~
16 ~~to prepare an economic impact report for the proposed rule before submitting the~~
17 ~~proposed rule to the legislature for review under s. 227.19 (2) if the secretary~~
18 ~~determines that all of the following apply: legislative council staff under s. 227.15.~~

19 **SECTION 4.** 227.137 (2) (a) of the statutes is repealed.

20 **SECTION 5.** 227.137 (2) (b) of the statutes is repealed.

21 **SECTION 6.** 227.137 (3) (intro.) of the statutes is amended to read:

22 227.137 (3) (intro.) An economic impact ~~report~~ analysis of a proposed rule shall
23 contain information on the economic effect of the proposed rule on specific
24 businesses, business sectors, public utility ratepayers, and the state's economy as a
25 whole. When preparing the ~~report~~ analysis, the agency shall solicit information and

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1 advice from ~~the department of commerce, and from governmental units,~~
2 associations, businesses, associations representing businesses, local governmental
3 units, and individuals that may be affected by the proposed rule. The agency may
4 request information that is reasonably necessary for the preparation of an economic
5 impact report analysis from other ~~state agencies, governmental units, associations,~~
6 businesses, associations, local governmental units, and individuals and from other
7 agencies. The economic impact report shall include all of the following:

8 **SECTION 7.** 227.137 (3) (a) of the statutes is amended to read:

9 227.137 (3) (a) An analysis and quantification of the policy problem, including
10 any risks to public health or the environment, that the proposed rule is intending to
11 address, including comparisons with the approaches used by the federal government
12 and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem and,
13 if the approach chosen by the agency to address that policy problem is different from
14 those approaches, a statement as to why the agency chose a different approach.

15 **SECTION 8.** 227.137 (3) (b) of the statutes is amended to read:

16 227.137 (3) (b) An analysis and detailed quantification of the economic impact
17 of the proposed rule, including the implementation and compliance costs that are
18 reasonably expected to be incurred by ~~the state, governmental units, associations,~~
19 or passed along to the businesses, and affected individuals that may be affected by
20 the proposed rule.

21 **SECTION 9.** 227.137 (3) (c) of the statutes is amended to read:

22 227.137 (3) (c) An analysis of the actual and quantifiable benefits of the
23 proposed rule, including ~~how the rule reduces the risks and addresses the problems~~
24 an assessment of how effective the proposed rule will be in addressing the policy
25 problem that the rule is intended to address.

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1 **SECTION 10.** 227.137 (3) (d) of the statutes is created to read:

2 227.137 (3) (d) An analysis of alternatives to the proposed rule, including the
3 alternative of not promulgating the proposed rule.

4 **SECTION 11.** 227.137 (3) (e) of the statutes is created to read:

5 227.137 (3) (e) A determination made in consultation with the businesses and
6 individuals that may be affected by the proposed rule as to whether the proposed rule
7 would adversely affect in a material way the economy, a sector of the economy,
8 productivity, jobs, or the overall economic competitiveness of this state.

9 **SECTION 12.** 227.137 (4) of the statutes is amended to read:

10 227.137 (4) ~~The On the same day that the agency shall submit~~ submits the
11 economic impact ~~report~~ analysis to the legislative council staff; under s. 227.15 (1),
12 the agency shall also submit that analysis to the department of administration, and
13 to the petitioner to the governor, and to the chief clerks of each house of the
14 legislature, who shall distribute the analysis to the presiding officers of their
15 respective houses and to the cochairpersons of the joint committee for review of
16 administrative rules. If a proposed rule is modified after the economic impact
17 analysis is submitted under this subsection so that the economic impact of the
18 proposed rule is significantly changed, the agency shall prepare a revised economic
19 impact analysis for the proposed rule as modified. A revised economic impact
20 analysis shall be prepared and submitted in the same manner as an original
21 economic impact analysis is prepared and submitted.

22 **SECTION 13.** 227.137 (5) of the statutes is repealed.

23 **SECTION 14.** 227.138 (title) and (1) of the statutes are repealed.

24 **SECTION 15.** 227.138 (2) (intro.) of the statutes is renumbered 227.137 (6)
25 (intro.) and amended to read:

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1 227.137 (6) (intro.) If an economic impact ~~report will be prepared under s.~~
2 ~~227.137 (2)~~ analysis regarding a proposed rule indicates that a total of \$20,000,000
3 or more in implementation and compliance costs are reasonably expected to be
4 incurred by or passed along to businesses and individuals as a result of the proposed
5 rule, the department of administration shall review the proposed rule and issue a
6 report. The agency ~~shall~~ may not submit a proposed rule to the legislature for review
7 under s. 227.19 (2) until the agency receives a copy of the department's report and
8 the approval of the secretary of administration. The report shall include all of the
9 following findings:

10 **SECTION 16.** 227.138 (2) (a) of the statutes is renumbered 227.138 (6) (a) and
11 amended to read:

12 227.138 (6) (a) That the economic impact ~~report and the analysis required~~
13 ~~under s. 227.137 (3) are~~ is supported by related documentation contained or
14 referenced in the economic impact ~~report~~ analysis.

15 **SECTION 17.** 227.138 (2) (b) of the statutes is renumbered 227.137 (6) (b).

16 **SECTION 18.** 227.138 (2) (c) of the statutes is renumbered 227.137 (6) (c).

17 **SECTION 19.** 227.138 (2) (d) of the statutes is renumbered 227.137 (6) (d).

18 **SECTION 20.** 227.138 (3) of the statutes is renumbered 227.137 (7) and amended
19 to read:

20 227.137 (7) Before issuing a report under sub. ~~(2)~~ (6), the department of
21 administration may return a proposed rule to the agency for further consideration
22 and revision with a written explanation of why the proposed rule is being returned.
23 If the agency head disagrees with the department's reasons for returning the
24 proposed rule, the agency head shall so notify the department in writing. The

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1 secretary of administration shall approve the proposed rule when the agency has
2 adequately addressed the issues raised during the department's review of the rule.

3 **SECTION 21.** 227.138 (4) of the statutes is repealed.

4 **SECTION 22.** 227.14 (2) (a) 6. of the statutes is amended to read:

5 227.14 (2) (a) 6. Any analysis and supporting documentation that the agency
6 used in support of the agency's determination of the rule's effect on small businesses
7 under s. 227.114 or that was used when the agency prepared an economic impact
8 report analysis under s. 227.137 (3).

9 **SECTION 23.** 227.15 (1) of the statutes is amended to read:

10 227.15 (1) SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. Prior to a public hearing
11 on a proposed rule or, if no public hearing is required, prior to notice under s. 227.19,
12 an agency shall submit the proposed rule to the legislative council staff for review.
13 The proposed rule shall be in the form required under s. 227.14 (1), and shall include
14 the material required under s. 227.14 (2) ~~to (4), (3), and (4) and the economic impact~~
15 analysis required under s. 227.137 (2). An agency may not hold a public hearing on
16 a proposed rule or give notice under s. 227.19 until after it has received a written
17 report of the legislative council staff review of the proposed rule or until after the
18 initial review period of 20 working days under sub. (2) (intro.), whichever comes first.
19 An agency may give notice of a public hearing prior to receipt of the legislative council
20 staff report. This subsection does not apply to rules promulgated under s. 227.24.

21 **SECTION 24.** 227.15 (1m) (bm) of the statutes is created to read:

22 227.15 (1m) (bm) The economic impact analysis required under s. 227.137 (2).

23 **SECTION 25.** 227.17 (3) (em) of the statutes is created to read:

24 227.17 (3) (em) The economic impact analysis required under s. 227.137 (2) and
25 any report prepared by the department of administration under s. 227.137 (6), or a

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1 summary of that analysis and report and a description of how a copy of the full
2 analysis and report may be obtained from the agency at no charge.

3 **SECTION 26.** 227.19 (3) (intro.) of the statutes is amended to read:

4 227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be
5 in writing and shall include the proposed rule in the form specified in s. 227.14 (1),
6 the material specified in s. 227.14 (2) ~~to, (3), and~~ (4), a copy of any economic impact
7 ~~report analysis~~ prepared by the agency under s. 227.137 (2), a copy of any report
8 prepared by the department of administration under s. ~~227.138~~ 227.137 (6), a copy
9 of any energy impact report received from the public service commission under s.
10 227.117 (2), and a copy of any recommendations of the legislative council staff. The
11 report shall also include all of the following:

12 **SECTION 27.** 227.24 (3g) of the statutes is created to read:

13 227.24 (3g) ECONOMIC IMPACT ANALYSIS. Before filing a proposed emergency rule
14 under sub. (3), an agency shall prepare an economic impact analysis for the proposed
15 emergency rule in the manner required under s. 227.137 (3) and shall submit that
16 analysis to the department of administration, to the governor, and to the chief clerks
17 of each house of the legislature, who shall distribute the analysis to the presiding
18 officers of their respective houses and to the cochairpersons of the joint committee
19 for review of administrative rules. If the economic impact analysis indicates that a
20 total of \$20,000,000 or more in implementation and compliance costs are reasonably
21 expected to be incurred by or passed along to businesses and individuals as a result
22 of the proposed emergency rule, the department of administration shall review the
23 proposed rule and issue a report under s. 227.137 (6). The agency may not file the
24 proposed emergency rule until the agency receives a copy of the department of

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1 administration's report and the approval of the secretary of administration under s.
2 227.137 (7).

3 **SECTION 9355. Initial applicability; Other.**

4 (1) ECONOMIC IMPACT ANALYSES. The treatment of sections 227.137 (title), (1), (2)
5 (intro.), (a) and (b), (3) (intro.), (a), (b), (c), (d), and (e), (4), and (5), 227.138 (title), (1),
6 (2) (intro.), (a), (b), (c), and (d), (3), and (4), 227.14 (2) (a) 6., 227.15 (1) and (1m) (bm),
7 227.17 (3) (em), 227.19 (3) (intro.), and 227.24 (3g) of the statutes first applies to a
8 proposed administrative rule submitted to the legislative council staff under section
9 227.15 of the statutes, as affected by this act, and to a proposed emergency rule filed
10 with the legislative reference bureau under section 227.24 (3) of the statutes on the
11 effective date of this subsection.

12

(END)