2011 Jr1 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB8)

Received: **02/07/2011**   Received By: **gmalaise**

Wanted: **Today**   Companion to LRB:

For: **Randy Hopper (608) 266-5300**   By/Representing: **Pam Shannon**

May Contact: Drafter: **gmalaise**
Subject: **Administrative Law**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Promulgation and judicial review of administrative rules

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise 02/07/2011	csicilia 02/08/2011		_____ _____			
/1			phenry 02/08/2011	_____ _____	sbasford 02/08/2011	sbasford 02/08/2011	

FE Sent For:

<END>

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/?	gmalaise	/1 cjs 2/8/11	2/8 ph	2/8 ph	jroy		

FE Sent For:

<END>

Malaise, Gordon

From:	Shannon, Pam
Sent:	Monday, February 07, 2011 11:41 AM
To:	Malaise, Gordon
Cc:	Hogan, Rebecca; Richard, Rob; Matthias, Mary
Subject:	Request for amendment

Importance: High

Attachments: SSamdt.doc

SSamdt.doc (29 KB)

To: Gordon Malaise, LRB
From: Pam Shannon and Mary Matthias, Senior Staff Attorneys, LC
February 7, 2011

Please draft the following items in a single simple amendment to Senate Substitute Amendment 1 (SSA 1) to Special Session Senate Bill 8 for Senator Randy Hopper. We would appreciate any suggestions you have for how to accomplish item 5 a. and b. The requester does not want a large fiscal estimate on this item and expect that this will be absorbed in current Revisor's duties. Please let us see a rough draft of this amendment before sending it to Senator Hopper. **This is scheduled for executive action tomorrow morning at 9 a.m. (Tuesday, February 8).**

1. Delete SECTION 19 (on p. 13, line 14).

2. In SECTION 30 (on p. 15, line 14), add at end of sentence: "and any revised economic impact analysis required under s. 227.137 (4)".

3. In SECTIONS 47 and 52, clarify that JCRAR has passive review over rules that were not objected to in a standing committee.

4. In SECTION 47, (on p. 21, line 12), insert "any" before "objection".

5. Notations concerning court decisions—create new provisions:

   a. Requiring notations in the affected Administrative Code provision(s) indicating that a circuit court has issued a declaratory judgment as to the validity of a rule under s. 227.40 (1), as amended by SSA 1. (This would be similar to the annotations regarding court decisions currently inserted after statutory provisions); and

   b. Requiring the Administrative Register to reflect whenever a circuit court has issued a declaratory judgment as to the validity of a rule as described above.

Malaise, Gordon

From:	Hogan, Rebecca
Sent:	Monday, February 07, 2011 3:12 PM
To:	Richard, Rob; Malaise, Gordon
Cc:	Konopacki, Larry; Matthias, Mary; Shannon, Pam
Subject:	RE: Additional Rule Changes

Hello everyone! In addition to the changes Pam and Mary requested of Gordon earlier, we'd like to add these changes below as well.
We'll also need stripes for both the Senate and the Assembly bills as we'll move both out of committee tomorrow with these changes.

Thanks to all of you for dealing with us and our last minute requests. You're all the best.

And to be clear, we do want all of the requests sent earlier and these additions in one amendment. Please call myself or Rob Richard with any questions.

Thanks!

Rebecca

From: Richard, Rob
Sent: Monday, February 07, 2011 2:57 PM
To: Hogan, Rebecca
Cc: Konopacki, Larry; Matthias, Mary; Shannon, Pam
Subject: Additional Rule Changes

Rebecca:

After discussions with Jason Culotta and others, I'm proposing these changes:

1) **SECTION 1.** 227.10 (2m) of the statutes is created to read:
227.10 (2m) No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly ~~such implementation and enforcement is expressly required or~~ permitted by statute or by a rule that has been promulgated in accordance with this subchapter. The governor, by executive order, may prescribe ~~standards~~ guidelines to ensure that rules are promulgated in compliance with this subchapter.

2) Section 3, page 8 line 11: delete the word "expressly" and add "explicitly"

3) Section 3, page 8, line 15: delete the word "expressly" and add "explicitly"

4) Section 62, page 26, line 17-18: delete "in the circuit court for Dane County" and add "in the county where the dispute arose"

5) Section 63, page 27, line 9: after "arose", add "In any action relating to judicial review of the validity of a rule, the venue shall be the county where the plaintiff resides and if the plaintiff is a nonresident or is not a natural person, the action shall be venued in the county where the dispute arose."

When using "judicial review of the validity of a rule" my intent is to say "administrative rule". Use whatever is consistent with statutes.

Larry, Mary and Pam -
6) When a revised EIA is completed under section 18, I would like this section to require Leg Council to provide a notice to the parties listed under section 18 (page 13, lines 4-8) that a revised EIA has been submitted. Is this a reasonable request?

Thanks,

Rob Richard
Legislative Aide
Office of Senator Scott Fitzgerald
Senate Majority Leader
608-266-5660

From:	Shannon, Pam
Sent:	Monday, February 07, 2011 3:46 PM
To:	Malaise, Gordon
Cc:	Konopacki, Larry; Hogan, Rebecca; Richard, Rob; Matthias, Mary
Subject:	RE: Additional Rule Changes

Hi Gordon:

In the same simple amendment to SSA 1 to SS SB 8 that as we requested earlier, please do the following:

Using Rob Richard's instructions below, draft items 1 through 4 as he describes them. For item 5, clarify that venue for administrative rule actions is as set forth in SECTION 62 of SSA 1, as modified by his item 4. For all other (ie non rule-related) actions under s. 801.50 (3), the venue should remain Dane County as under current law.

Instead of Rob's instructions on item 6, regarding EIA's, add language to SECTION 34 specifying that the report to the legislature referenced in this provision must also include a copy of any revised economic impact analysis prepared under s. 227.137 (4).

Thanks loads.

Pam Shannon
Senior Staff Attorney
Wisconsin Legislative Council Staff
(608) 266-2680
pam.shannon@legis.wisconsin.gov

From:	Matthias, Mary
Sent:	Monday, February 07, 2011 3:30 PM
To:	Malaise, Gordon
Cc:	Konopacki, Larry; Shannon, Pam; Hogan, Rebecca; Richard, Rob
Subject:	RE: Additional Rule Changes

Gordon- FYI- we just got off the phone with Rob and have a few tweaks to the instructions below. We'll e-mail you shortly.

Mary Matthias
Senior Staff Attorney
Wisconsin Legislative Council Staff
Ph.(608)266-0932;Fax (608)266-3830

From: Hogan, Rebecca
Sent: Monday, February 07, 2011 3:12 PM
To: Richard, Rob; Malaise, Gordon
Cc: Konopacki, Larry; Matthias, Mary; Shannon, Pam
Subject: RE: Additional Rule Changes

Hello everyone! In addition to the changes Pam and Mary requested of Gordon earlier, we'd like to add these changes below as well.
We'll also need stripes for both the Senate and the Assembly bills as we'll move both out of committee tomorrow with these changes.

1

Thanks to all of you for dealing with us and our last minute requests. You're all the best.

And to be clear, we do want all of the requests sent earlier and these additions in one amendment. Please call myself or Rob Richard with any questions.

Thanks!

Rebecca

From: Richard, Rob
Sent: Monday, February 07, 2011 2:57 PM
To: Hogan, Rebecca
Cc: Konopacki, Larry; Matthias, Mary; Shannon, Pam
Subject: Additional Rule Changes

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After discussions with Jason Culotta and others, I'm proposing these changes:

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2) Section 3, page 8 line 11: delete the word "expressly" and add "explicitly"

3) Section 3, page 8, line 15: delete the word "expressly" and add "explicitly"

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When using "judicial review of the validity of a rule" my intent is to say "administrative rule". Use whatever is consistent with statutes.

Larry, Mary and Pam -
6) When a revised EIA is completed under section 18, I would like this section to require Leg Council to provide a notice to the parties listed under section 18 (page 13, lines 4-8) that a revised EIA has been submitted. Is this a reasonable request?

Thanks,

Rob Richard
Legislative Aide
Office of Senator Scott Fitzgerald
Senate Majority Leader
608-266-5660

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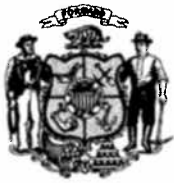
Thanks,

Rob Richard
Legislative Aide
Office of Senator Scott Fitzgerald
Senate Majority Leader
608-266-5660

SN 27
9:00 AM

SENATE AMENDMENT ,

TO SENATE SUBSTITUTE AMENDMENT 1,

TO SENATE BILL 8

1   At the locations indicated, amend the substitute amendment as follows:

2   **1.** Page 7, line 1: delete lines 1 to 7 and substitute:

3   "**SECTION 1g.** 13.92 (4) (a) of the statutes is amended to read:

4   13.92 **(4)** (a) The legislative reference bureau shall prepare copy for publication

5   in the Wisconsin administrative code. <u>Whenever the legislative reference bureau</u>

6   <u>receives notice under s. 227.40 (6) of the entry of a declaratory judgment determining</u>

7   <u>the validity or invalidity of a rule, the legislative reference bureau shall insert an</u>

8   <u>annotation of that determination in the Wisconsin administrative code under the</u>

9   <u>rule that was the subject of the determination.</u>

History: 1971 c. 270 s. 104; 1973 c. 90, 333; 1975 c. 41 s. 52; 1975 c. 199, 266; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 110, 204; 1981 c. 372; 1983 a. 27, 29, 308; 1987 a. 27; 1989 a. 31; 1991 a. 39, 316; 1995 a. 27; 1997 a. 27, 237; 2001 a. 46; 2003 a. 33; 2007 a. 20 ss. 17dr to 17fm, 17he, 17Lr to 17nr, 17re, 17te, 17ve to 17xr.

10   **SECTION 1m.** 35.93 (4) of the statutes is amended to read:

1   35.93 **(4)** Each issue of the Wisconsin administrative register shall contain a

2   notice section in which shall be printed the notices of hearings on rule making which

3   agencies have transmitted to the legislative reference bureau for that purpose,

4   statements of scope of proposed rules under s. 227.135, notices of submittal to the

5   legislative council staff under s. 227.14 (4m), notices of intent to promulgate rules

6   without a public hearing under s. 227.16 (2) (e), notices of referrals of proposed rules

7   to presiding officers under s. 227.19 (2), notices of emergency rules in effect, fiscal

8   estimates for rule-making orders under s. 227.14 (4), notices of declaratory

9   judgments received under s. 227.40 (6), and such other notices as may be required

10   by law or determined by the legislative reference bureau to be appropriate.

History: 1971 c. 152 s. 38; 1975 c. 252, 421; 1977 c. 187 s. 135; 1979 c. 34, 221; 1981 c. 314 s. 146; 1983 a. 192; 1985 a. 29; 1985 a. 182 s. 55 (1), 57; 1991 a. 215; 1995 a. 106; 2003 a. 33; 2005 a. 25; 2007 a. 20.

11   **SECTION 1r.** 227.10 (2m) of the statutes is created to read:

12   227.10 **(2m)** No agency may implement or enforce any standard, requirement,

13   or threshold, including as a term or condition of any license issued by the agency,

14   unless that standard, requirement, or threshold is explicitly required or explicitly

15   permitted by statute or by a rule that has been promulgated in accordance with this

16   subchapter. The governor, by executive order, may prescribe guidelines to ensure

17   that rules are promulgated in compliance with this subchapter.".

18   **2.** Page 8, line 11: delete "expressly" and substitute "explicitly".

19   **3.** Page 8, line 15: delete "expressly" and substitute "explicitly".

20   **4.** Page 13, line 14: delete that line.

21   **5.** Page 15, line 6: delete "(4) and" and substitute "(4),".

22   **6.** Page 15, line 7: after "(2)" insert ", and any revised economic impact analysis

23   required under s. 227.137 (4)".

1   **7.** Page 15, line 14: after "(2)" insert "and any revised economic impact analysis

2   required under s. 227.137 (4)".

3   **8.** Page 15, line 16: after "(2)" insert ", any revised economic impact analysis

4   required under s. 227.137 (4),".

5   **9.** Page 16, line 24: after "(2)" insert ", a copy of any revised economic impact

6   analysis prepared by the agency under s. 227.137 (4)".

7   **10.** Page 21, line 12: after "and" insert "any".

8   **11.** Page 23, line 16: after "(d)" insert ", until the expiration of the review

9   period under subd. 1., if no committee has objected to the proposed rule or the part

10   of the proposed rule".   *par. (b)*

11   **12.** Page 26, line 18: delete "Dane County" and substitute "~~Dane County~~ the

12   county where the dispute arose".

13   **13.** Page 27, line 4: delete lines 4 to 9 and substitute:

14   "SECTION 62g. 227.40 (6) of the statutes is created to read:

15   227.40 **(6)** Upon entry of a final order in a declaratory judgment action under

16   sub. (1), the court shall notify the legislative reference bureau of the court's

17   determination as to the validity or invalidity of the rule, and the legislative reference

18   bureau shall publish a notice of that determination in the Wisconsin administrative

19   register under s. 35.93 (4) and insert an annotation of that determination in the

20   Wisconsin administrative code under s. 13.92 (4) (a).

21   SECTION 63g. 801.50 (3) of the statutes is amended to read:

22   801.50 **(3)** ~~All~~ Except as provided in this subsection, all actions in which the

23   sole defendant is the state, any state board or commission, or any state officer,

24   employee, or agent in an official capacity shall be venued in Dane County unless

1   another venue is specifically authorized by law. <u>All actions relating to the validity</u>

2   <u>or invalidity of a rule shall be venued as provided in s. 227.40 (1).</u>".

History: 1983 a. 204, 228, 389, 538; 1985 a. 234, 291; 1987 a. 208; 1993 a. 318, 319; 1997 a. 283; 1999 a. 150 s. 672; 2001 a. 30 s. 108; 2001 a. 109; 2007 a. 1; 2009 a. 28, 42, 261.

3   **14.** Page 27, line 11: delete the material beginning with "section" and ending

4   with "(1)" on page 27, line 12 and substitute: "sections 13.92 (4) (a), 35.93 (4), and   STET leave as typ'

5   227.40 (1) and (6)".

6   **(END)**

(9) #. Page 27, line 24: delete

" (4), and (5)" and substitute

" and (4)" .