

State of Wisconsin



January 2011 Special Session
Assembly Bill 8

Date of enactment: **May 23, 2011**
Date of publication*: **June 7, 2011**

2011 WISCONSIN ACT 21

AN ACT *to repeal* 227.137 (1), 227.137 (2) (a), 227.137 (2) (b), 227.138 (title) and (1), 227.138 (4) and 227.19 (5) (b) 3.; *to renumber* 227.138 (2) (b), 227.138 (2) (c), 227.138 (2) (d) and 227.24 (1) (e) 1.; *to renumber and amend* 227.11 (2) (a), 227.137 (2) (intro.), 227.138 (2) (intro.), 227.138 (2) (a) and 227.138 (3); *to amend* 13.92 (4) (a), 35.93 (4), 227.135 (2), 227.135 (3), 227.137 (title), 227.137 (3) (intro.), 227.137 (3) (a), 227.137 (3) (b), 227.137 (3) (c), 227.137 (4), 227.14 (2) (a) 6., 227.15 (1), 227.19 (2), 227.19 (3) (intro.), 227.19 (4) (b) 1. (intro.), 227.19 (4) (b) 2., 227.19 (4) (b) 2m., 227.19 (4) (b) 3., 227.19 (4) (b) 3m., 227.19 (4) (b) 5., 227.19 (4) (b) 6., 227.19 (4) (c), 227.19 (4) (d) (intro.), 227.19 (5) (a), 227.19 (5) (b) 1. (intro.), 227.19 (5) (b) 2., 227.19 (5) (b) 4., 227.19 (5) (c), 227.19 (5) (d), 227.19 (5) (e), 227.19 (5) (f), 227.19 (5) (g) (intro.), 227.19 (6) (a) 1., 227.19 (6) (a) 4., 227.40 (1) and 801.50 (3); *to repeal and recreate* 227.135 (4) and 227.19 (4) (e); and *to create* 227.10 (2m), 227.11 (2) (a) 1. to 3., 227.137 (3) (d), 227.137 (3) (e), 227.15 (1m) (bm), 227.17 (3) (em), 227.185, 227.19 (4) (b) 1m., 227.19 (5) (b) 1m., 227.24 (1) (e) 1d., 227.24 (1) (e) 1g. and 227.40 (6) of the statutes; **relating to:** the authority of a state agency to promulgate rules interpreting the provisions of a statute enforced or administered by the agency and to implement or enforce any standard, requirement, or threshold as a term or condition of a license issued by the state agency; gubernatorial approval of proposed administrative rules; economic impact analyses of proposed rules and emergency rules; legislative review of proposed rules; and venue in a declaratory judgment action seeking judicial review of the validity of an administrative rule and in an action in which the sole defendant is the state.

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

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

13.92 (4) (a) The legislative reference bureau shall prepare copy for publication in the Wisconsin administrative code. Whenever the legislative reference bureau receives notice under s. 227.40 (6) of the entry of a declaratory judgment determining the validity or invalidity of a rule, the legislative reference bureau shall insert an annotation of that determination in the Wisconsin administrative code under the rule that was the subject of the determination.

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

35.93 (4) Each issue of the Wisconsin administrative register shall contain a notice section in which shall be printed the notices of hearings on rule making which agencies have transmitted to the legislative reference bureau for that purpose, statements of scope of proposed rules under s. 227.135, notices of submittal to the legislative council staff under s. 227.14 (4m), notices of intent to promulgate rules without a public hearing under s. 227.16 (2) (e), notices of referrals of proposed rules to presiding officers under s. 227.19 (2), notices of emergency rules in effect, fiscal estimates for rule-making orders under s. 227.14 (4), notices of declaratory judg-

* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

2011 Wisconsin Act 21

ments received under s. 227.40 (6), and such other notices as may be required by law or determined by the legislative reference bureau to be appropriate.

SECTION 1r. 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 permitted by statute or by a rule that has been promulgated in accordance with this subchapter. The governor, by executive order, may prescribe guidelines to ensure that rules are promulgated in compliance with this subchapter.

SECTION 2. 227.11 (2) (a) of the statutes is renumbered 227.11 (2) (a) (intro.) and amended to read:

227.11 (2) (a) (intro.) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by ~~it~~ the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if ~~it~~ the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

SECTION 3. 227.11 (2) (a) 1. to 3. of the statutes are created to read:

227.11 (2) (a) 1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

SECTION 4. 227.135 (2) of the statutes is amended to read:

227.135 (2) ~~Until~~ An agency that has prepared a statement of the scope of the proposed rule shall present the statement to the governor and to the individual or body with policy-making powers over the subject matter of a ~~the proposed rule approves a statement of the scope of the proposed rule, a state employee or official may not perform any activity in connection with drafting the proposed rule except for an activity necessary to prepare the statement for approval. The agency may not send the statement to the legislative reference bureau for publica-~~

~~tion under sub. (3) until the governor issues a written notice of approval of the statement. The individual or body with policy-making powers may not approve a~~ the statement until at least 10 days after publication of the statement in the register as required under sub. (3). If the individual or body with policy-making powers does not disapprove the statement within 30 days after the statement is presented to the individual or body, or by the 11th day after publication of the statement in the register, whichever is later, the statement is considered to be approved. No state employee or official may perform any activity in connection with the drafting of a proposed rule except for an activity necessary to prepare the statement of the scope of the proposed rule until the governor and the individual or body with policy-making powers over the subject matter of the proposed rule approves the statement.

SECTION 5. 227.135 (3) of the statutes is amended to read:

227.135 (3) ~~The agency shall send the~~ If the governor approves a statement of the scope of a proposed rule under sub. (2), ~~the agency shall send the statement to the legislative reference bureau for publication in the register. On the same day that the agency sends the statement to the legislative reference bureau, the agency shall send a copy of the statement to the secretary of administration.~~

SECTION 6. 227.135 (4) of the statutes is repealed and recreated to read:

227.135 (4) If at any time after a statement of the scope of a proposed rule is approved under sub. (2) the agency changes the scope of the proposed rule in any meaningful or measurable way, including changing the scope of the proposed rule so as to include in the scope any activity, business, material, or product that is not specifically included in the original scope of the proposed rule, the agency shall prepare and obtain approval of a revised statement of the scope of the proposed rule in the same manner as the original statement was prepared and approved under subs. (1) and (2). No state employee or official may perform any activity in connection with the drafting of the proposed rule except for an activity necessary to prepare the revised statement of the scope of the proposed rule until the revised statement is so approved.

SECTION 7. 227.137 (title) of the statutes is amended to read:

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

SECTION 8. 227.137 (1) of the statutes is repealed.

SECTION 9. 227.137 (2) (intro.) of the statutes is renumbered 227.137 (2) and amended to read:

227.137 (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), a municipality, an association that represents a farm, labor, business, or professional group, or 5 or more persons that would be directly and

uniquely affected by the proposed rule may submit a petition to the department of administration asking that the secretary of administration direct the agency to prepare an economic impact report for the proposed rule. ~~The An agency shall prepare an economic impact report analysis for a proposed rule 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: legislative council staff under s. 227.15.~~

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

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

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

227.137 (3) (intro.) An economic impact ~~report~~ analysis of a proposed rule shall contain information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole. When preparing the ~~report~~ analysis, the agency shall solicit information and advice from ~~the department of commerce, and from governmental units, associations, businesses, associations representing businesses, local governmental units,~~ and individuals that may be affected by the proposed rule. The agency shall prepare the economic impact analysis in coordination with local governmental units 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, associations, local governmental units, and individuals and from other agencies.~~ The economic impact ~~report~~ analysis shall include all of the following:

SECTION 13. 227.137 (3) (a) of the statutes is amended to read:

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

SECTION 14. 227.137 (3) (b) of the statutes is amended to read:

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

SECTION 15. 227.137 (3) (c) of the statutes is amended to read:

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

SECTION 16. 227.137 (3) (d) of the statutes is created to read:

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

SECTION 17. 227.137 (3) (e) of the statutes is created to read:

227.137 (3) (e) A determination made in consultation with the businesses, local governmental units, 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.

SECTION 18. 227.137 (4) of the statutes is amended to read:

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

SECTION 20. 227.138 (title) and (1) of the statutes are repealed.

2011 Wisconsin Act 21

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

227.137 (6) (intro.) If an economic impact report will be prepared under s. 227.137 (2) analysis regarding a proposed rule 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, local governmental units, and individuals as a result of the proposed rule, the department of administration shall review the proposed rule and issue a report. The agency shall may 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:

SECTION 22. 227.138 (2) (a) of the statutes is renumbered 227.138 (6) (a) and amended to read:

227.138 (6) (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.

SECTION 23. 227.138 (2) (b) of the statutes is renumbered 227.137 (6) (b).

SECTION 24. 227.138 (2) (c) of the statutes is renumbered 227.137 (6) (c).

SECTION 25. 227.138 (2) (d) of the statutes is renumbered 227.137 (6) (d).

SECTION 26. 227.138 (3) of the statutes is renumbered 227.137 (7) and amended to read:

227.137 (7) Before issuing a report under sub. ~~(2)~~ (6), the department of administration may return a proposed rule to the agency for further consideration and revision with a written explanation of why the proposed rule is being 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.

SECTION 27. 227.138 (4) of the statutes is repealed.

SECTION 28. 227.14 (2) (a) 6. of the statutes is amended to read:

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

SECTION 29. 227.15 (1) of the statutes is amended to read:

227.15 (1) SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. Prior to a public hearing on a proposed rule or, if no public hearing is required, prior to notice under s. 227.19, an agency shall submit the proposed rule to the legislative council staff for review. The proposed rule shall be in the form required under s. 227.14 (1), and shall include the

material required under s. 227.14 (2) ~~to (4), (3), and (4)~~, the economic impact analysis required under s. 227.137 (2), and any revised economic impact analysis required under s. 227.137 (4). An agency may not hold a public hearing on a proposed rule or give notice under s. 227.19 until after it has received a written report of the legislative council staff review of the proposed rule or until after the initial review period of 20 working days under sub. (2) (intro.), whichever comes first. An agency may give notice of a public hearing prior to receipt of the legislative council staff report. This subsection does not apply to rules promulgated under s. 227.24.

SECTION 30. 227.15 (1m) (bm) of the statutes is created to read:

227.15 (1m) (bm) The economic impact analysis required under s. 227.137 (2) and any revised economic impact analysis required under s. 227.137 (4).

SECTION 31. 227.17 (3) (em) of the statutes is created to read:

227.17 (3) (em) The economic impact analysis required under s. 227.137 (2), any revised economic impact analysis required under s. 227.137 (4), and any report prepared by the department of administration under s. 227.137 (6), or a summary of that analysis and report and a description of how a copy of the full analysis and report may be obtained from the agency at no charge.

SECTION 32. 227.185 of the statutes is created to read:

227.185 Approval by governor. After a proposed rule is in final draft form, the agency shall submit the proposed rule to the governor for approval. The governor, in his or her discretion, may approve or reject the proposed rule. If the governor approves a proposed rule, the governor shall provide the agency with a written notice of that approval. No proposed rule may be submitted to the legislature for review under s. 227.19 (2) unless the governor has approved the proposed rule in writing.

SECTION 33. 227.19 (2) of the statutes is amended to read:

227.19 (2) NOTIFICATION OF LEGISLATURE. An agency shall submit a notice to the chief clerk of each house of the legislature when a proposed rule is in final draft form. The notice shall be submitted in triplicate and shall be accompanied by a report in the form specified under sub. (3). A notice received under this subsection ~~on or~~ after September 1 of an even-numbered year the last day of the legislature's final general-business floor period in the biennial session as established in the joint resolution required under s. 13.02 (3) shall be considered received on the first day of the next regular session of the legislature, unless the presiding officers of both houses direct referral of the notice and report under this subsection before that day. The presiding officer of each house of the legislature shall, within 10 working days following the day on which the notice and report are received, direct the appropriate chief clerk to refer ~~them~~ the notice and report to one standing committee. The agency shall submit to

the legislative reference bureau for publication in the register a statement that a proposed rule has been submitted to the chief clerk of each house of the legislature. Each chief clerk shall enter a similar statement in the journal of his or her house.

SECTION 34. 227.19 (3) (intro.) of the statutes is amended to read:

227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be in writing and shall include the proposed rule in the form specified in s. 227.14 (1), the material specified in s. 227.14 (2) ~~to, (3), and (4)~~, a copy of any economic impact report analysis prepared by the agency under s. 227.137 (2), a copy of any revised economic impact analysis prepared by the agency under s. 227.137 (4), a copy of any report prepared by the department of administration under s. ~~227.138~~ 227.137 (6), 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:

SECTION 35. 227.19 (4) (b) 1. (intro.) of the statutes is amended to read:

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

SECTION 36. 227.19 (4) (b) 1m. of the statutes is created to read:

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

SECTION 37. 227.19 (4) (b) 2. of the statutes is amended to read:

227.19 (4) (b) 2. If a committee, by a majority vote of a quorum of the committee, requests modifications in a proposed rule, and the agency, in writing, agrees to consider making modifications, the review period for both committees to which the proposed rule is referred is extended either to the 10th working day following receipt by the those committees of the modified proposed rule or a written statement to ~~the committee~~ those committees that the agency will not make the modifications or to the expiration of the review period under subd. 1. or, if applicable, subd. 1m., whichever is later. There is no limit

either on the number of modification agreements that may be entered into or on the time within which modifications may be made.

SECTION 38. 227.19 (4) (b) 2m. of the statutes is amended to read:

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

SECTION 39. 227.19 (4) (b) 3. of the statutes is amended to read:

227.19 (4) (b) 3. An agency may, on its own initiative, submit a germane modification to a proposed rule to a committee during its review period. If a germane modification is submitted within the final 10 days of a committee review period under subd. 1., the review period for both committees to which the proposed rule is referred is extended for 10 working days. If a germane modification is submitted to a committee after the committee in the other house has concluded its jurisdiction over the proposed rule, the jurisdiction of the committee of the other house is revived for 10 working days. In this subdivision, an agency's proposal to delete part of a proposed rule under committee review shall be treated as a germane modification of the proposed rule.

SECTION 40. 227.19 (4) (b) 3m. of the statutes is amended to read:

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

SECTION 41. 227.19 (4) (b) 5. of the statutes is amended to read:

227.19 (4) (b) 5. If a committee in one house votes to object to a proposed rule or to a part of the proposed rule under par. (d), the chairperson or cochairpersons of the committee shall immediately notify the chairperson or cochairpersons of the committee in the other house to

2011 Wisconsin Act 21

which the proposed rule was referred in the other house. Upon receipt of the notice, the review period for the committee in the other house immediately ceases and no further action on the proposed rule or part of the proposed rule objected to may be taken under this paragraph by that committee, but the committee may proceed under par. (d) to object to the proposed rule or part of the proposed rule.

SECTION 42. 227.19 (4) (b) 6. of the statutes is amended to read:

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

SECTION 43. 227.19 (4) (c) of the statutes is amended to read:

227.19 (4) (c) Agency not to promulgate rule during Waiver of committee review. ~~An agency may not promulgate a proposed rule during the committee review period unless both committees waive jurisdiction over the proposed rule prior to the expiration of the review period. A committee may waive its jurisdiction over a proposed rule prior to the expiration of the committee review period~~ by adopting, by a majority vote of a quorum of the committee, a motion waiving the committee's jurisdiction.

SECTION 44. 227.19 (4) (d) (intro.) of the statutes is amended to read:

227.19 (4) (d) *Committee action.* (intro.) A committee, by a majority vote of a quorum of the committee during the applicable review period under par. (b), may object to a proposed rule or to a part of a proposed rule for one or more of the following reasons:

SECTION 45. 227.19 (4) (e) of the statutes is repealed and recreated to read:

227.19 (4) (e) *Conclusion of committee jurisdiction.* Subject to par. (b) 3., a committee's jurisdiction over a proposed rule is concluded when the committee objects to, approves, or waives its jurisdiction over the proposed rule or when the committee review period ends, whichever occurs first. When a committee's jurisdiction over a proposed rule is concluded, the committee shall report the proposed rule and any objection as provided in sub. (5) (a).

SECTION 46. 227.19 (5) (a) of the statutes is amended to read:

227.19 (5) (a) *Referral.* ~~If a committee objects to~~ When a committee's jurisdiction over a proposed rule is concluded as provided in sub. (4) (e), the committee shall report the proposed rule and the any objection to the chief clerk of the appropriate house within 5 working days after making the objection that jurisdiction is concluded. The chief clerk shall refer the proposed rule and the any objection to the joint committee for review of administrative rules within 5 working days after receiving the committee report.

SECTION 47. 227.19 (5) (b) 1. (intro.) of the statutes is amended to read:

227.19 (5) (b) 1. (intro.) ~~The~~ Except as provided in subd. 1m., the review period for the joint committee for review of administrative rules extends for 30 days after the last referral of a proposed rule and any objection are referred to it to that committee, and during that review period that committee may take any action on the proposed rule in whole or in part permitted under this subsection. The joint committee for review of administrative rules shall meet and take action in executive session during that period with respect to any proposed rule or any part of a proposed rule to which a committee has objected and may meet and take action in executive session during that period with respect to any proposed rule or any part of a proposed rule to which no committee has objected, except that if the cochairpersons take either of the following actions within the 30-day period, the joint committee review period is continued for 30 days from the date on which the first 30-day review period would have expired:

SECTION 48. 227.19 (5) (b) 1m. of the statutes is created to read:

227.19 (5) (b) 1m. If a notice and report received under sub. (2) after the last day of the legislature's final general-business floorperiod as specified in sub. (2) is referred for review by the joint committee for review of administrative rules before the first day of the next regular session of the legislature, the review period for the joint committee for review of administrative rules extends to the day specified under s. 13.02 (1) for the next legislature to convene. During that review period, the joint committee for review of administrative rules may meet and take action in executive session and may take any action on the proposed rule in whole or in part permitted under this subsection. If the joint committee for review of administrative rules meets in executive session with respect to a proposed rule or part of a proposed rule to which a committee has objected, that joint committee shall take action as permitted under this subsection with respect to the committee's objection.

SECTION 49. 227.19 (5) (b) 2. of the statutes is amended to read:

227.19 (5) (b) 2. If the joint committee for review of administrative rules, by a majority vote of a quorum of the committee, requests modifications in a proposed rule,

and the agency, in writing, agrees to consider making modifications, the review period for the joint committee is extended either to the 10th working day following receipt by the joint committee of the modified proposed rule or a written statement to the joint committee that the agency will not make the modifications or to the expiration of the review period under subd. 1. or, if applicable, subd. 1m., whichever is later. There is no limit either on the number of modification agreements that may be entered into or on the time within which modifications may be made.

SECTION 50. 227.19 (5) (b) 3. of the statutes is repealed.

SECTION 51. 227.19 (5) (b) 4. of the statutes is amended to read:

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

SECTION 52. 227.19 (5) (c) of the statutes is amended to read:

227.19 (5) (c) *Agency not to promulgate rule during joint committee review.* An agency may not promulgate a proposed rule ~~to which a committee has objected unless or a part of a proposed rule until~~ the joint committee for review of administrative rules, ~~under par. (d), nonconcur~~ in the action objection of the committee, concur in the approval of the committee, otherwise approves the proposed rule or part of the proposed rule, or waives its jurisdiction over the proposed rule or part of the proposed rule under par. (d), until the expiration of the review period under par. (b) 1., if no committee has objected to the proposed rule or the part of the proposed rule, or until a bill introduced under par. (e) fails to be enacted. An agency may promulgate any part of a proposed rule to which no objection has been made.

SECTION 53. 227.19 (5) (d) of the statutes is amended to read:

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

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

SECTION 54. 227.19 (5) (e) of the statutes is amended to read:

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

SECTION 55. 227.19 (5) (f) of the statutes is amended to read:

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

SECTION 56. 227.19 (5) (g) (intro.) of the statutes is amended to read:

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

2011 Wisconsin Act 21

“adversely disposes of” means that one house has voted in one of the following ways:

SECTION 57. 227.19 (6) (a) 1. of the statutes is amended to read:

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

SECTION 58. 227.19 (6) (a) 4. of the statutes is amended to read:

227.19 (6) (a) 4. A statement and analysis of the grounds upon which the joint committee for review of administrative rules relies for objecting to the proposed rule or part of the proposed rule.

SECTION 59. 227.24 (1) (e) 1. of the statutes is renumbered 227.24 (1) (e) 1m.

SECTION 60. 227.24 (1) (e) 1d. of the statutes is created to read:

227.24 (1) (e) 1d. Prepare a statement of the scope of the proposed emergency rule as provided in s. 227.135 (1), obtain approval of the statement as provided in s. 227.135 (2), and send the statement to the legislative reference bureau for publication in the register under s. 227.135 (3) at the same time that the proposed emergency rule is published. If the agency changes the scope of a proposed emergency rule as described in s. 227.135 (4), the agency shall prepare and obtain approval of a revised statement of the scope of the proposed emergency rule as provided in s. 227.135 (4).

SECTION 61. 227.24 (1) (e) 1g. of the statutes is created to read:

227.24 (1) (e) 1g. Submit the proposed emergency rule in final draft form to the governor for approval. The governor, in his or her discretion, may approve or reject the proposed emergency rule. If the governor approves a proposed emergency rule, the governor shall provide the agency with a written notice of that approval. An agency may not file an emergency rule for publication until the governor approves the emergency rule in writing.

SECTION 62. 227.40 (1) of the statutes is amended to read:

227.40 (1) Except as provided in sub. (2), the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of such the rule brought in the circuit court for the county where the party asserting the invalidity of the rule resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for Dane County the county where the dispute arose. The officer, ~~board, commission~~ or other agency whose rule is involved shall be the party defendant. The summons in such the action shall be served as provided in s. 801.11 (3) and by delivering a copy to such that officer or, if the agency is composed of more than one person, to the secretary or clerk of the agency ~~where composed of more than one person~~

or to any member of ~~such the~~ agency. The court shall render a declaratory judgment in such the action only when it appears from the complaint and the supporting evidence that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the agency to pass upon the validity of the rule in question.

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

227.40 (6) Upon entry of a final order in a declaratory judgment action under sub. (1), the court shall notify the legislative reference bureau of the court’s determination as to the validity or invalidity of the rule, and the legislative reference bureau shall publish a notice of that determination in the Wisconsin administrative register under s. 35.93 (4) and insert an annotation of that determination in the Wisconsin administrative code under s. 13.92 (4) (a).

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

801.50 (3) All Except as provided in this subsection, all actions in which the sole defendant is the state, any state board or commission, or any state officer, employee, or agent in an official capacity shall be venued in Dane County unless another venue is specifically authorized by law. All actions relating to the validity or invalidity of a rule shall be venued as provided in s. 227.40 (1).

SECTION 9309. Initial applicability; Circuit Courts.

(1) VENUE IN DECLARATORY JUDGMENT ACTIONS. The treatment of sections 13.92 (4) (a), 35.93 (4), and 227.40 (1) and (6) of the statutes first applies to an action for declaratory judgment commenced on the effective date of this subsection.

(2) VENUE IN CERTAIN ACTIONS AGAINST THE STATE. The treatment of section 801.50 (3) of the statutes first applies to an action commenced on the effective date of this subsection.

SECTION 9355. Initial applicability; Other.

(1) RULE-MAKING AUTHORITY; RULES INTERPRETING STATUTES. The renumbering and amendment of section 227.11 (2) (a) of the statutes and the creation of section 227.11 (2) (a) 1. to 3. of the statutes first apply to a proposed administrative rule submitted to the legislative council staff under section 227.15 of the statutes on the effective date of this subsection.

(2) ECONOMIC IMPACT ANALYSES. The treatment of sections 227.137 (title), (1), (2) (intro.), (a) and (b), (3) (intro.), (a), (b), (c), (d), and (e), and (4), 227.138 (title), (1), (2) (intro.), (a), (b), (c), and (d), (3), and (4), 227.14 (2) (a) 6., 227.15 (1) and (1m) (bm), 227.17 (3) (em), and 227.19 (3) (intro.) of the statutes first applies to a proposed administrative rule submitted to the legislative

council staff under section 227.15 of the statutes, as affected by this act, and to a proposed emergency rule filed with the legislative reference bureau under section 227.24 (3) of the statutes on the effective date of this subsection.

(3) GUBERNATORIAL APPROVAL OF EMERGENCY RULES. The treatment of sections 227.135 (2), (3), and (4), 227.185, and 227.24 (1) (e) 1., 1d., and 1g. of the statutes first applies to a proposed rule or emergency rule whose statement of scope is presented to the governor for

approval on the effective date of this subsection.

(4) LEGISLATIVE APPROVAL OF RULES. The treatment of section 227.19 (2), (4) (b) 1. (intro.), 1m., 2., 2m., 3., 3m., 5., and 6., (c), (d) (intro.), and (e), (5) (a), (b) 1. (intro.), 1m., 2., 3., and 4., (c), (d), (e), (f), and (g) (intro.), and (6) (a) 1. and 4. of the statutes first applies to a proposed rule submitted to the legislature under section 227.19 (2), as affected by this act, on the effective date of this subsection.
