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**2011 Jr1 DRAFTING REQUEST**

**Bill**

Received: **01/12/2011**

Received By: **gmalaise**

Wanted: **Today**

Companion to LRB:

For: **Jeff Fitzgerald (608) 266-2540**

By/Representing: **Dan Romportl**

May Contact:

Drafter: **gmalaise**

Subject: **Administrative Law**

Addl. Drafters: **phurley**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Fitzgerald@legis.wisconsin.gov**

Carbon copy (CC:) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Agency rule-making authority; gubernatorial approval of rules; economic impact of rules; venue in actions against the state

**Instructions:**

See attached--draft companion to -0991

**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 01/12/2011	wjackson 01/12/2011		_____			S&L
/1			phury 01/13/2011	_____	sbasford 01/13/2011	lparisi 01/13/2011 mbarman 01/18/2011	Jacket Replaced

FE Sent For:

at  
intro

<END>

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/1			phentry 01/13/2011	_____	sbasford 01/13/2011		

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/?	gmalaise	1 WLJ 1/12	1/13 ph	1/13 ph			

FE Sent For:

<END>

Gmm

**Parisi, Lori**

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**From:** Romportl, Daniel  
**Sent:** Wednesday, January 12, 2011 3:59 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 11-0991/1 Topic: Administrative rule omnibus

Please Jacket LRB 11-0991/1 for the ASSEMBLY.

Gmm + PJH

already  
jacketed  
for

Sen  
Fitzgerald

Gordon - please do  
companion for Assembly  
(see attached)

Thank you

**Parisi, Lori**

---

**From:** Romportl, Daniel  
**Sent:** Wednesday, January 12, 2011 4:51 PM  
**To:** Parisi, Lori  
**Cc:** Bott, Eric  
**Subject:** RE: Draft Review: LRB 11-0989/1 Topic: Wind energy system rules

Yes, Lori, thank you. Please have them jacketed for the Assembly, and send them to Speaker Fitzgerald's office.

I CC'd Eric Bott in the Speaker's office on this email.

Thanks again,  
Dan

---

**From:** Parisi, Lori  
**Sent:** Wednesday, January 12, 2011 4:36 PM  
**To:** Romportl, Daniel  
**Subject:** RE: Draft Review: LRB 11-0989/1 Topic: Wind energy system rules

Hello Daniel, I received the Assembly jacketing requests that you sent over for LRB's 11-0991/1, 11-0989/1 and 11-0990/1. These drafts have already been jacketed for the Senate, so I assume that you would like companion bills for the Senate then for all three of these. I will forward your requests onto the appropriate drafting attorneys.

Please call with any questions.

Lori Parisi  
Program Assistant  
266-3561

---

**From:** Romportl, Daniel  
**Sent:** Wednesday, January 12, 2011 3:59 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 11-0989/1 Topic: Wind energy system rules

Please Jacket LRB 11-0989/1 for the ASSEMBLY.



State of Wisconsin  
2011 - 2012 LEGISLATURE

January 2011 Special Session



-1012/1

LRB-09914

GMM&PJH:wlj/nwn/cjs:md

LN 1112  
**BILL**  
Companion - No change  
Today - 1113

↑ ↑ ↑  
Stays

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),  
3 227.138 (2) (d) and 227.24 (1) (e) 1.; *to renumber and amend* 227.11 (2) (a),  
4 227.137 (2) (intro.), 227.138 (2) (intro.), 227.138 (2) (a) and 227.138 (3); *to*  
5 *amend* 227.135 (2), 227.135 (3), 227.137 (title), 227.137 (3) (intro.), 227.137 (3)  
6 (a), 227.137 (3) (b), 227.137 (3) (c), 227.137 (4), 227.14 (2) (a) 6., 227.15 (1),  
7 227.19 (3) (intro.), 227.40 (1) and 801.50 (3); *to repeal and recreate* 227.135  
8 (4); and *to create* 227.10 (2m), 227.11 (2) (a) 1. to 3., 227.137 (3) (d), 227.137 (3)  
9 (e), 227.15 (1m) (bm), 227.17 (3) (em), 227.185, 227.24 (1) (e) 1d., 227.24 (1) (e)  
10 1g. and 227.24 (3g) of the statutes; **relating to:** the authority of a state agency  
11 to promulgate rules interpreting the provisions of a statute enforced or  
12 administered by the agency and to implement or enforce any standard,  
13 requirement, or threshold as a term or condition of a license issued by the state  
14 agency; gubernatorial approval of proposed administrative rules; economic



1 impact analyses of proposed rules and emergency rules; and venue in a  
2 declaratory judgment action seeking judicial review of the validity of an  
3 administrative rule and in an action in which the sole defendant is the state.

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### *Analysis by the Legislative Reference Bureau*

#### *Introduction*

This bill makes various changes relating to 1) the authority of a state agency (agency) to promulgate administrative rules (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 agency; 2) gubernatorial approval of proposed rules; 3) economic impact analyses for proposed rules; and 4) venue in declaratory judgment actions seeking judicial review of the validity of a rule and in actions in which the sole defendant is the state.

#### *Agency authority to promulgate rules and implement standards*

Under current law, an agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, except that a rule is not valid if the rule exceeds the bounds of correct interpretation.

This bill provides that all of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

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 expressly 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 expressly 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.

The bill also prohibits an agency from implementing or enforcing any standard, requirement, or threshold as a term or condition of any license issued by the agency unless such implementation or enforcement is expressly required or permitted by statute or by a rule that has been promulgated in accordance with statutory rule-making procedures. In addition, the bill permits the governor, by executive order, to prescribe standards to ensure that rules are promulgated in compliance with the subchapter of the statutes governing rule making.

### ***Gubernatorial approval of proposed rules***

Current law requires an agency that is planning to promulgate a rule to prepare a statement of the scope of the proposed rule (statement of scope), present the statement of scope to the individual or body with policy-making powers over the subject matter of the proposed rule (policy-making individual or body) for approval, and send the statement of scope to the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Register (register). Currently, the policy-making individual or body may not approve a statement of scope until at least tenth days after publication of the statement of scope in the register. Current law also provides that if the policy-making individual or body does not disapprove the statement of scope within 30 days after it is presented to that individual or body, or by the eleventh day after its publication in the register, whichever is later, the statement is considered to be approved. Finally, current law prohibits a state employee or official from performing any activity in connection with the drafting of a proposed rule, except for an activity necessary to prepare the statement of scope, until the policy-making individual or body approves the statement of scope.

This bill makes the following changes with respect to statements of scope:

1. Requires a statement of scope to be approved by the governor as well as by the policy-making individual or body before the statement of scope may be sent to the LRB for publication in the register and prohibits a state employee or official from performing any activity in connection with the drafting of a proposed rule, except for an activity necessary to prepare the statement of scope, until the governor as well as the policy-making individual or body approves the statement of scope.

2. Eliminates automatic approval of a statement of scope if the policy-making individual or body does not disapprove the statement of scope within 30 days after it is presented to that individual or body, or by the eleventh day after its publication in the register, whichever is later.

3. Requires an agency to prepare and obtain approval of a revised statement of scope if after a statement of scope is approved the agency changes the scope of the proposed rule in any meaningful or measurable way.

4. Requires an agency to prepare and obtain approval of a statement of scope for a proposed emergency rule in the same manner as a statement of scope is prepared and approved for a nonemergency rule. A statement of scope for a proposed emergency rule must be published at the same time that the emergency rule is published. If the agency changes the scope of a proposed emergency rule, the agency must prepare and obtain approval of a revised statement of scope for the proposed emergency rule in the same manner as a revised statement of scope is prepared and approved for a nonemergency rule.

In addition, the bill requires an agency to submit a proposed rule in final draft form to the governor for approval before the rule may be submitted to the legislature for review or filed with the LRB for publication and to submit a proposed emergency rule in final draft form to the governor for approval before the emergency rule may be filed with the LRB for publication.

**BILL**

***Economic impact analyses for proposed rules***

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 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.

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, the chairpersons of the appropriate standing committees 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, to the chairpersons of the appropriate standing committees 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.

***Venue in judicial review actions and in actions against state***

Under current law, subject to certain exceptions, the exclusive means of judicial review of the validity of a rule is by an action for declaratory judgment as to the

validity of the rule brought in the circuit court for Dane County. This bill permits a declaratory judgment action seeking judicial review of the validity of a rule to be brought in the county where the party asserting the invalidity of the rule resides or has its principal place of business.

Under current law, any civil action or special proceeding in which the state, a state board or commission, or a state officer, employee, or agent acting in his or her official capacity is the sole defendant, is venued in Dane County. Under the bill, those actions are venued in the county where the plaintiff resides unless a different venue is specifically authorized by law. Under the bill, if a plaintiff is not a resident of the state or is not a natural person, the action is venued in the county where the dispute arose.

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

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

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

2           227.10 **(2m)** No agency may implement or enforce any standard, requirement,  
3 or threshold as a term or condition of any license issued by the agency unless such  
4 implementation or enforcement is expressly required or permitted by statute or by  
5 a rule that has been promulgated in accordance with this subchapter. The governor,  
6 by executive order, may prescribe standards to ensure that rules are promulgated in  
7 compliance with this subchapter.

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

10           227.11 **(2)** (a) (intro.) Each agency may promulgate rules interpreting the  
11 provisions of any statute enforced or administered by ~~it~~ the agency, if the agency  
12 considers it necessary to effectuate the purpose of the statute, but a rule is not valid  
13 if ~~it~~ the rule exceeds the bounds of correct interpretation. All of the following apply  
14 to the promulgation of a rule interpreting the provisions of a statute enforced or  
15 administered by an agency:

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

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

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

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

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

17           227.135 **(2)** ~~Until~~ An agency that has prepared a statement of the scope of the  
18 proposed rule shall present the statement to the governor and to the individual or  
19 body with policy-making powers over the subject matter of ~~a- the~~ proposed rule  
20 ~~approves a statement of the scope of the proposed rule, a state employee or official~~  
21 ~~may not perform any activity in connection with drafting the proposed rule except~~  
22 ~~for an activity necessary to prepare the statement~~ for approval. The agency may not  
23 send the statement to the legislative reference bureau for publication under sub. (3)  
24 until the governor issues a written notice of approval of the statement. The  
25 individual or body with policy-making powers may not approve ~~a- the~~ statement

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

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

12 227.135 (3) ~~The agency shall send the~~ If the governor approves a statement of  
13 the scope of a proposed rule under sub. (2), the agency shall send the statement to  
14 the legislative reference bureau for publication in the register. On the same day that  
15 the agency sends the statement to the legislative reference bureau, the agency shall  
16 send a copy of the statement to the secretary of administration.

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

18 227.135 (4) If at any time after a statement of the scope of a proposed rule is  
19 approved under sub. (2) the agency changes the scope of the proposed rule in any  
20 meaningful or measurable way, including changing the scope of the proposed rule so  
21 as to include in the scope any activity, business, material, or product that is not  
22 specifically included in the original scope of the proposed rule, the agency shall  
23 prepare and obtain approval of a revised statement of the scope of the proposed rule  
24 in the same manner as the original statement was prepared and approved under  
25 subs. (1) and (2). No state employee or official may perform any activity in connection

1 with the drafting of the proposed rule except for an activity necessary to prepare the  
2 revised statement of the scope of the proposed rule until the revised statement is so  
3 approved.

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

5 **227.137 (title) Economic impact reports analyses of proposed rules.**

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

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

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

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



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

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

3           227.137 **(3)** (intro.) An economic impact ~~report~~ analysis of a proposed rule shall  
4 contain information on the economic effect of the proposed rule on specific  
5 businesses, business sectors, public utility ratepayers, and the state's economy as a  
6 whole. When preparing the ~~report~~ analysis, the agency shall solicit information and  
7 advice from ~~the department of commerce, and from governmental units,~~  
8 ~~associations,~~ businesses, associations representing businesses, local governmental  
9 units, and individuals that may be affected by the proposed rule. The agency may  
10 request information that is reasonably necessary for the preparation of an economic  
11 impact ~~report~~ analysis from other ~~state agencies, governmental units, associations,~~  
12 ~~businesses, associations, local governmental units,~~ and individuals and from other  
13 agencies. The economic impact report shall include all of the following:

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

15           227.137 **(3)** (a) An analysis and quantification of the policy problem, ~~including~~  
16 ~~any risks to public health or the environment,~~ that the proposed rule is intending to  
17 address, including comparisons with the approaches used by the federal government  
18 and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem and,  
19 if the approach chosen by the agency to address that policy problem is different from  
20 those approaches, a statement as to why the agency chose a different approach.

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

22           227.137 **(3)** (b) An analysis and detailed quantification of the economic impact  
23 of the proposed rule, including the implementation and compliance costs that are  
24 reasonably expected to be incurred by ~~the state, governmental units, associations,~~

1 or passed along to the businesses, and affected individuals that may be affected by  
2 the proposed rule.

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

4 227.137 (3) (c) An analysis of the actual and quantifiable benefits of the  
5 proposed rule, including how the rule reduces the risks and addresses the problems  
6 an assessment of how effective the proposed rule will be in addressing the policy  
7 problem that the rule is intended to address.

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

9 227.137 (3) (d) An analysis of alternatives to the proposed rule, including the  
10 alternative of not promulgating the proposed rule.

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

12 227.137 (3) (e) A determination made in consultation with the businesses and  
13 individuals that may be affected by the proposed rule as to whether the proposed rule  
14 would adversely affect in a material way the economy, a sector of the economy,  
15 productivity, jobs, or the overall economic competitiveness of this state.

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

17 227.137 (4) The On the same day that the agency shall submit submits the  
18 economic impact report analysis to the legislative council staff, under s. 227.15 (1),  
19 the agency shall also submit that analysis to the department of administration, and  
20 to the petitioner to the governor, and to the chief clerks of each house of the  
21 legislature, who shall distribute the analysis to the presiding officers of their  
22 respective houses, to the chairpersons of the appropriate standing committees of  
23 their respective houses, as designated by those presiding officers, and to the  
24 cochairpersons of the joint committee for review of administrative rules. If a  
25 proposed rule is modified after the economic impact analysis is submitted under this

1 subsection so that the economic impact of the proposed rule is significantly changed.  
2 the agency shall prepare a revised economic impact analysis for the proposed rule as  
3 modified. A revised economic impact analysis shall be prepared and submitted in the  
4 same manner as an original economic impact analysis is prepared and submitted.

5 **SECTION 19.** 227.137 (5) of the statutes is repealed.

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

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

9 227.137 **(6)** (intro.) If an economic impact report will be prepared under s.  
10 227.137 (2) analysis regarding a proposed rule indicates that a total of \$20,000,000  
11 or more in implementation and compliance costs are reasonably expected to be  
12 incurred by or passed along to businesses and individuals as a result of the proposed  
13 rule, the department of administration shall review the proposed rule and issue a  
14 report. The agency ~~shall~~ may not submit a proposed rule to the legislature for review  
15 under s. 227.19 (2) until the agency receives a copy of the department's report and  
16 the approval of the secretary of administration. The report shall include all of the  
17 following findings:

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

20 227.138 **(6)** (a) That the economic impact ~~report and the analysis required~~  
21 ~~under s. 227.137 (3) are~~ is supported by related documentation contained or  
22 referenced in the economic impact ~~report~~ analysis.

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

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

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

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

3           227.137 (7) Before issuing a report under sub. ~~(2)~~ (6), the department of of  
4 administration may return a proposed rule to the agency for further consideration  
5 and revision with a written explanation of why the proposed rule is being returned.  
6 If the agency head disagrees with the department's reasons for returning the  
7 proposed rule, the agency head shall so notify the department in writing. The  
8 secretary of administration shall approve the proposed rule when the agency has  
9 adequately addressed the issues raised during the department's review of the rule.

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

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

12          227.14 (2) (a) 6. Any analysis and supporting documentation that the agency  
13 used in support of the agency's determination of the rule's effect on small businesses  
14 under s. 227.114 or that was used when the agency prepared an economic impact  
15 ~~report~~ analysis under s. 227.137 (3).

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

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

1 An agency may give notice of a public hearing prior to receipt of the legislative council  
2 staff report. This subsection does not apply to rules promulgated under s. 227.24.

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

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

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

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

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

11 **227.185 Approval by governor.** After a proposed rule is in final draft form,  
12 the agency shall submit the proposed rule to the governor for approval. The governor,  
13 in his or her discretion, may approve, modify, or reject the proposed rule. If the  
14 governor approves a proposed rule, the governor shall provide the agency with a  
15 written notice of that approval. No proposed rule may be submitted to the legislature  
16 for review under s. 227.19 (2) or filed with the legislative reference bureau under s.  
17 227.20 for publication under s. 227.21 unless the governor has approved the proposed  
18 rule in writing.

19 **SECTION 33.** 227.19 (3) (intro.) of the statutes is amended to read:

20 227.19 **(3)** FORM OF REPORT. (intro.) The report required under sub. (2) shall be  
21 in writing and shall include the proposed rule in the form specified in s. 227.14 (1),  
22 the material specified in s. 227.14 (2) ~~to, (3), and~~ (4), a copy of any economic impact  
23 ~~report~~ analysis prepared by the agency under s. 227.137 (2), a copy of any report  
24 prepared by the department of administration under s. ~~227.138~~ 227.137 (6), a copy  
25 of any energy impact report received from the public service commission under s.

1 227.117 (2), and a copy of any recommendations of the legislative council staff. The  
2 report shall also include all of the following:

3 **SECTION 34.** 227.24 (1) (e) 1. of the statutes is renumbered 227.24 (1) (e) 1m.

4 **SECTION 35.** 227.24 (1) (e) 1d. of the statutes is created to read:

5 227.24 **(1)** (e) 1d. Prepare a statement of the scope of the proposed emergency  
6 rule as provided in s. 227.135 (1), obtain approval of the statement as provided in s.  
7 227.135 (2), and send the statement to the legislative reference bureau for  
8 publication in the register under s. 227.135 (3) at the same time that the proposed  
9 emergency rule is published. If the agency changes the scope of a proposed  
10 emergency rule as described in s. 227.135 (4), the agency shall prepare and obtain  
11 approval of a revised statement of the scope of the proposed emergency rule as  
12 provided in s. 227.135 (4).

13 **SECTION 36.** 227.24 (1) (e) 1g. of the statutes is created to read:

14 227.24 **(1)** (e) 1g. Submit the proposed emergency rule in final draft form to the  
15 governor for approval as provided in s. 227.185. An agency may not file an emergency  
16 rule for publication until the governor approves the emergency rule in writing.

17 **SECTION 37.** 227.24 (3g) of the statutes is created to read:

18 227.24 **(3g)** ECONOMIC IMPACT ANALYSIS. Before filing a proposed emergency rule  
19 under sub. (3), an agency shall prepare an economic impact analysis for the proposed  
20 emergency rule in the manner required under s. 227.137 (3) and shall submit that  
21 analysis to the department of administration, to the governor, and to the chief clerks  
22 of each house of the legislature, who shall distribute the analysis to the presiding  
23 officers of their respective houses, to the chairpersons of the appropriate standing  
24 committees of their respective houses, as designated by those presiding officers, and  
25 to the cochairpersons of the joint committee for review of administrative rules. If the

1 economic impact analysis indicates that a total of \$20,000,000 or more in  
2 implementation and compliance costs are reasonably expected to be incurred by or  
3 passed along to businesses and individuals as a result of the proposed emergency  
4 rule, the department of administration shall review the proposed rule and issue a  
5 report under s. 227.137 (6). The agency may not file the proposed emergency rule  
6 until the agency receives a copy of the department of administration's report and the  
7 approval of the secretary of administration under s. 227.137 (7).

8 **SECTION 38.** 227.40 (1) of the statutes is amended to read:

9 227.40 (1) Except as provided in sub. (2), the exclusive means of judicial review  
10 of the validity of a rule shall be an action for declaratory judgment as to the validity  
11 of ~~such the~~ rule brought in the circuit court for the county where the party asserting  
12 the invalidity of the rule resides or has its principal place of business or, if that party  
13 is a nonresident or does not have its principal place of business in this state, in the  
14 circuit court for Dane County. The officer, ~~board, commission~~ or other agency whose  
15 rule is involved shall be the party defendant. The summons in ~~such the~~ action shall  
16 be served as provided in s. 801.11 (3) and by delivering a copy to ~~such that~~ officer or,  
17 if the agency is composed of more than one person, to the secretary or clerk of the  
18 agency ~~where composed of more than one person~~ or to any member of ~~such the~~ agency.  
19 The court shall render a declaratory judgment in ~~such the~~ action only when it  
20 appears from the complaint and the supporting evidence that the rule or its  
21 threatened application interferes with or impairs, or threatens to interfere with or  
22 impair, the legal rights and privileges of the plaintiff. A declaratory judgment may  
23 be rendered whether or not the plaintiff has first requested the agency to pass upon  
24 the validity of the rule in question.

25 **SECTION 39.** 801.50 (3) of the statutes is amended to read:

1           801.50 (3) All actions in which the sole defendant is the state, any state board  
2 or commission or any state officer, employee or agent in an official capacity shall be  
3 venued in ~~Dane County~~ the county where the plaintiff resides unless another venue  
4 is specifically authorized by law. If the plaintiff is a nonresident or is not a natural  
5 person, the action shall be venued in the county where the dispute arose.

6           **SECTION 9309. Initial applicability; Circuit Courts.**

7           (1) VENUE IN DECLARATORY JUDGMENT ACTIONS. The treatment of section 227.40  
8 (1) of the statutes first applies to an action for declaratory judgment commenced on  
9 the effective date of this subsection.

10          (2) VENUE IN CERTAIN ACTIONS AGAINST THE STATE. The treatment of section  
11 801.50 (3) of the statutes first applies to an action commenced on the effective date  
12 of this subsection.

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

14          (1) RULE-MAKING AUTHORITY; RULES INTERPRETING STATUTES. The renumbering  
15 and amendment of section 227.11 (2) (a) of the statutes and the creation of section  
16 227.11 (2) (a) 1. to 3. of the statutes first apply to a proposed administrative rule  
17 submitted to the legislative council staff under section 227.15 of the statutes on the  
18 effective date of this subsection.

19          (2) ECONOMIC IMPACT ANALYSES. The treatment of sections 227.137 (title), (1), (2)  
20 (intro.), (a) and (b), (3) (intro.), (a), (b), (c), (d), and (e), (4), and (5), 227.138 (title), (1),  
21 (2) (intro.), (a), (b), (c), and (d), (3), and (4), 227.14 (2) (a) 6., 227.15 (1) and (1m) (bm),  
22 227.17 (3) (em), 227.19 (3) (intro.), and 227.24 (3g) of the statutes first applies to a  
23 proposed administrative rule submitted to the legislative council staff under section  
24 227.15 of the statutes, as affected by this act, and to a proposed emergency rule filed



1 with the legislative reference bureau under section 227.24 (3) of the statutes on the  
2 effective date of this subsection.

3 (3) GUBERNATORIAL APPROVAL OF PROPOSED RULES AND EMERGENCY RULES. The  
4 treatment of sections 227.135 (2), (3), and (4), 227.185, and 227.24 (1) (e) 1., 1d., and  
5 1g. of the statutes first applies to a proposed rule or emergency rule whose statement  
6 of scope is presented to the governor for approval on the effective date of this  
7 subsection.

8 (END)

**Parisi, Lori**

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**From:** Bott, Eric  
**Sent:** Thursday, January 13, 2011 9:53 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 11-1012/1 Topic: Agency rule-making authority; gubernatorial approval of rules; economic impact of rules; venue in actions against the state

Please Jacket LRB 11-1012/1 for the ASSEMBLY.