

2011 Jr1 DRAFTING REQUEST

Senate Amendment (SA-AB8)

Received: 02/10/2011

Received By: gmalaise

Wanted: 02/10/2011

Companion to LRB:

For: Mark Miller (608) 266-9170

By/Representing: Mike Browne

May Contact:

Drafter: gmalaise

Subject: Administrative Law

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Miller@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Sunset of administrative rules changes

Instructions:

Sunset bill on March 1, 2015

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>
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/1			mduchek 02/10/2011	_____	cduerst 02/10/2011	cduerst 02/10/2011	

FE Sent For:

<END>

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/?	gmalaise	1 2 10 JGF JGF					

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State of Wisconsin
2011 - 2012 LEGISLATURE



LRBa05167

GMM

January 2011 Special Session

IN 210
Now!!!

Handwritten initials and '15f'

SENATE AMENDMENT,
TO ASSEMBLY BILL 8

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At the locations indicated, amend the bill as follows:

1. Page 8, line 6: after "subchapter." insert "this subsection does not apply after February 28, 2015."

2. Page 8, line 12: delete "All" and substitute "Prior to March 1, 2015, all".

3. Page 9, line 25: delete that line and substitute "statement. Gubernatorial approval of a statement of the scope of a proposed rule as provided in this subsection is not required after February 28, 2015."

4. Page 10, line 18: delete that line and substitute "approved. This subsection does not apply after February 28, 2015."

5. Page 10, line 18: after that line insert:

"SECTION 6m. 227.135 (5) of the statutes is created to read:

as shown by assembly substitute amendment 1

plain

1 227.135 (5) Beginning on March 1, 2015, this section does not apply to
2 emergency rules.

3 ~~6. Page 10, line 18: after that line insert:~~

4 ~~SECTION 19m.~~ 227.137 of the statutes is repealed and recreated to read:

5 **227.137 Economic impact reports of proposed rules.** (1) In this section,
6 “agency” means the departments of agriculture, trade and consumer protection;
7 commerce; natural resources; transportation; and workforce development.

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

23 (a) The petition was submitted to the department of administration no later
24 than 90 days after the publication of the statement of the scope of the proposed rule

1 under s. 227.135 (3) or no later than 10 days after publication of the notice for a public
2 hearing under s. 227.17, whichever is earlier.

3 (b) The proposed rule would cost affected persons \$20,000,000 or more during
4 each of the first 5 years after the rule's implementation to comply with the rule, or
5 the rule would adversely affect in a material way the economy, a sector of the
6 economy, productivity, competition, jobs, the environment, public health or safety, or
7 state, local, or tribal governments or communities.

8 (3) An economic impact report shall contain information on the effect of the
9 proposed rule on specific businesses, business sectors, and the state's economy.
10 When preparing the report, the agency shall solicit information and advice from the
11 department of commerce, and from governmental units, associations, businesses,
12 and individuals that may be affected by the proposed rule. The agency may request
13 information that is reasonably necessary for the preparation of an economic impact
14 report from other state agencies, governmental units, associations, businesses, and
15 individuals. The economic impact report shall include all of the following:

16 (a) An analysis and quantification of the problem, including any risks to public
17 health or the environment, that the rule is intending to address.

18 (b) An analysis and quantification of the economic impact of the rule, including
19 costs reasonably expected to be incurred by the state, governmental units,
20 associations, businesses, and affected individuals.

21 (c) An analysis of benefits of the rule, including how the rule reduces the risks
22 and addresses the problems that the rule is intended to address.

23 (4) The agency shall submit the economic impact report to the legislative
24 council staff, to the department of administration, and to the petitioner.

1 (5) This section[✓] does not apply to emergency rules promulgated under s.
2 227.24.[✓]

3 (6) If an economic impact report will be prepared under sub. (2)[✓] regarding a
4 proposed rule, the department of administration shall review the proposed rule and
5 issue a report. The agency shall not submit a proposed rule to the legislature for
6 review under s. 227.19 (2)[✓] until the agency receives a copy of the department's report
7 and the approval of the secretary of administration. The report shall include all of
8 the following findings:

9 (a) That the economic impact report and the analysis required under sub. (3)[✓]
10 are supported by related documentation contained in the economic impact report.

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

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

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

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

1 (8) No person is entitled to judicial review of any action taken by the
2 department of administration under this section.”.

3 **7.** Page 15, line 4: after that line insert:

4 “**SECTION 28m.** 227.14 (2) (a) 6. of the statutes is repealed and recreated to read:

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

9 **8.** Page 15, line 10: after “and” insert “, prior to March 1, 2015,”.

10 **9.** Page 15, line 18: after “(2).” insert “This paragraph does not apply after
11 February 28, 2015.”.

12 **10.** Page 15, line 23: after “charge.” insert “This paragraph does not apply
13 after February 28, 2015.”.

14 **11.** Page 16, line 8: after “writing.” insert “This section does not apply after
15 February 28, 2015.”.

16 **12.** Page 16, line 25: after that line insert:

17 “**SECTION 33m.** 227.19 (2) of the statutes is repealed and recreated to read:

18 227.19 (2) NOTIFICATION OF LEGISLATURE. An agency shall submit a notice to the
19 chief clerk of each house of the legislature when a proposed rule is in final draft form.
20 The notice shall be submitted in triplicate and shall be accompanied by a report in
21 the form specified under sub. (3). A notice received under this subsection on or after
22 September 1 of an even-numbered year shall be considered received on the first day
23 of the next regular session of the legislature. The presiding officer of each house of
24 the legislature shall, within 10 working days following the day on which the notice

1 and report are received, direct the appropriate chief clerk to refer them to one
2 standing committee. The agency shall submit to the legislative reference bureau for
3 publication in the register a statement that a proposed rule has been submitted to
4 the chief clerk of each house of the legislature. Each chief clerk shall enter a similar
5 statement in the journal of his or her house.”.

6 **13.** Page 17, line 9: after that line insert:

7 “**SECTION 34m.** 227.19 (3) (intro.) of the statutes is repealed and recreated to
8 read:

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

17 **14.** Page 21, line 9: after that line insert:

18 “**SECTION 45m.** 227.19 (4) of the statutes is repealed and recreated to read:

19 227.19 (4) COMMITTEE REVIEW. (a) *Notice of referral.* Upon receipt of notice that
20 a proposed rule has been referred to a committee under sub. (2), the chairperson or
21 chairpersons of the committee shall notify, in writing, each committee member of the
22 referral.

23 (am) *Committee meeting.* A committee may be convened upon the call of its
24 chairperson or cochairpersons to review a proposed rule. A committee may meet

1 separately or jointly with the other committee to which the notice and report were
2 referred. A committee may hold a public hearing to review a proposed rule.

3 (b) *Committee review period.* 1. Except as provided under subd. 5., the
4 committee review period for each committee extends for 30 days after referral under
5 sub. (2). If the chairperson or the cochairpersons of a committee take either of the
6 following actions within the 30-day period, the committee review period for that
7 committee is continued for 30 days from the date on which the first 30-day review
8 period would have expired:

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

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

13 2. If a committee, by a majority vote of a quorum of the committee, requests
14 modifications in a proposed rule, and the agency, in writing, agrees to consider
15 making modifications, the review period for both committees is extended either to
16 the 10th working day following receipt by the committees of the modified proposed
17 rule or a written statement to the committee that the agency will not make
18 modifications or to the expiration of the review period under subd. 1., whichever is
19 later. There is no limit either on the number of modification agreements that may
20 be entered into or on the time within which modifications may be made.

21 2m. If a committee requests in writing that the public service commission
22 determine the rule's impact on the cost or reliability of electricity generation,
23 transmission, or distribution (or) of fuels used in generating electricity, the
24 commission shall prepare an energy impact report in the manner provided under s.
25 227.117 (1). The commission shall submit a copy of the report to the committee and

1 to the agency that proposed the rule within 30 days after the written request is
2 submitted to the commission. The review period for both committees is extended to
3 the 10th working day following receipt by the committees of the report, to the
4 expiration of the review period under subd. 1., or to the expiration of the review
5 period under subd. 2., whichever is later.

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

15 3m. An agency may, during the committee review period, reconsider its action
16 by recalling the proposed rule from the chief clerk of each house of the legislature.
17 If the agency decides to continue the rule-making process with regard to the
18 proposed rule, it shall resubmit the proposed rule, either in its recalled form or with
19 one or more germane modifications, to the chief clerk in each house of the legislature
20 as provided in sub. (2) and the committee review period under subd. 1. shall begin
21 again.

22 4. An agency may modify a proposed rule following the committee review period
23 if the modification is germane to the subject matter of the proposed rule. If a germane
24 modification is made, the agency shall recall the proposed rule from the chief clerk
25 of each house of the legislature. The proposed rule, with the germane modification,

1 shall be resubmitted to the presiding officer in each house of the legislature as
2 provided in sub. (2) and the committee review period shall begin again. Following
3 the committee review period, an agency may not make any modification that is not
4 germane to the subject matter of the proposed rule. In this subdivision, an agency's
5 proposal to delete part of a proposed rule under committee review shall be treated
6 as a germane modification of the proposed rule.

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

14 6. If a committee has not concluded its jurisdiction over a proposed rule before
15 the day specified under s. 13.02 (1) for the next legislature to convene, that
16 jurisdiction immediately ceases and, within 10 working days after that date, the
17 presiding officer of the appropriate house shall refer the proposed rule to the
18 appropriate standing committee as provided under sub. (2). The committee review
19 period that was interrupted by the loss of jurisdiction under this subdivision
20 continues for the committee to which the proposed rule is referred under this
21 subdivision beginning on the date of referral under this subdivision.

22 (c) *Agency not to promulgate rule during committee review.* An agency may not
23 promulgate a proposed rule during the committee review period unless both
24 committees waive jurisdiction over the proposed rule prior to the expiration of the

1 review period. A committee may waive its jurisdiction by adopting, by a majority vote
2 of a quorum of the committee, a motion waiving the committee's jurisdiction.

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

6 1. An absence of statutory authority.

7 2. An emergency relating to public health, safety or welfare.

8 3. A failure to comply with legislative intent.

9 4. A conflict with state law.

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

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

13 (e) *Part of a proposed rule.* An agency may promulgate any part of a proposed
14 rule which is not objected to by a committee.”

15 **15.** Page 26, line 2: after that line insert:

16 “SECTION 56m. 227.19 (5) of the statutes is repealed and recreated to read:

17 227.19 (5) JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES. (a) *Referral.*

18 If a committee objects to a proposed rule, the committee shall report the proposed
19 rule and the objection to the chief clerk of the appropriate house within 5 working
20 days after making the objection. The chief clerk shall refer the proposed rule and the
21 objection to the joint committee for review of administrative rules within 5 working
22 days after receiving the committee report.

23 (b) *Joint committee review period.* 1. The review period for the joint committee
24 for review of administrative rules extends for 30 days after a proposed rule and

1 objection are referred to it. The joint committee for review of administrative rules
2 shall meet and take action in executive session during that period, except that if the
3 cochairpersons take either of the following actions within the 30-day period, the joint
4 committee review period is continued for 30 days from the date on which the first
5 30-day review period would have expired:

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

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

11 2. If the joint committee for review of administrative rules, by a majority vote
12 of a quorum of the committee, requests modifications in a proposed rule, and the
13 agency, in writing, agrees to consider making modifications, the review period for the
14 joint committee is extended either to the 10th working day following receipt by the
15 joint committee of the modified proposed rule or a written statement to the joint
16 committee that the agency will not make modifications or to the expiration of the
17 review period under subd. 1., whichever is later. There is no limit either on the
18 number of modification agreements that may be entered into or on the time within
19 which modifications may be made.

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

22 4. If the joint committee for review of administrative rules has not concluded
23 its jurisdiction over a proposed rule before the day specified under s. 13.02 (1) for the
24 next legislature to convene, that jurisdiction immediately ceases and, within 10
25 working days after that date, the presiding officer of the appropriate house shall

1 refer the proposed rule to the joint committee for review of administrative rules. The
2 committee review period that was interrupted by the loss of jurisdiction under this
3 subdivision continues for the joint committee for review of administrative rules to
4 which the proposed rule is referred under this subdivision beginning on the date of
5 referral under this subdivision.

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

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

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

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

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

- 19 1. To indefinitely postpone the bill.
- 20 2. To nonconcur in the bill.
- 21 3. Against ordering the bill engrossed.
- 22 4. Against ordering the bill to a 3rd reading.
- 23 5. Against passage.
- 24 6. Against concurrence."

1 **16.** Page 26, line 19: after “(4).” insert “This subdivision does not apply after
2 February 28, 2015.”.

3 **17.** Page 27, line 2: after “writing.” insert “This subdivision does not apply
4 after February 28, 2015.”.

5 **18.** Page 26, line 0: after that line insert:
6

“SECTION ~~52m~~ ^{per 19} 227.40 (1) of the statutes is repealed and recreated to read:

7 227.40 (1) Except as provided in sub. (2), the exclusive means of judicial review
8 of the validity of a rule shall be an action for declaratory judgment as to the validity
9 of such rule brought in the circuit court for Dane County. The officer, board,
10 commission or other agency whose rule is involved shall be the party defendant. The
11 summons in such action shall be served as provided in s. 801.11 (3) and by delivering
12 a copy to such officer or to the secretary or clerk of the agency where composed of more
13 than one person or to any member of such agency. The court shall render a
14 declaratory judgment in such action only when it appears from the complaint and the
15 supporting evidence that the rule or its threatened application interferes with or
16 impairs, or threatens to interfere with or impair, the legal rights and privileges of the
17 plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has
18 first requested the agency to pass upon the validity of the rule in question.”.

19 **19.** Page 27, line 25: after that line insert:

20 “SECTION **63m.** 801.50 (3) of the statutes is repealed and recreated to read:

21 801.50 (3) All actions in which the sole defendant is the state, any state board
22 or commission or any state officer, employee or agent in an official capacity shall be
23 venued in Dane County unless another venue is specifically authorized by law.”.

24 **20.** Page 28, line 2: delete “treatment” and substitute “amendment”.

