



2013 SENATE BILL 468

December 23, 2013 – Introduced by Senator OLSEN, cosponsored by Representative KESTELL. Referred to Committee on Education.

1 **AN ACT** *to amend* 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 35.93 (2)
2 (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e) (intro.), 35.93 (3) (e) 1., 227.01 (13)
3 (intro.), 227.11 (2) (intro.) and 227.27 (2); and *to create* 13.92 (4) (bm) and
4 227.265 of the statutes; **relating to:** rule-making procedures and modifying
5 and repealing various administrative rules promulgated by the Department of
6 Public Instruction.

Analysis by the Legislative Reference Bureau

Rule-making procedures

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.

2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.

3. Subject to certain exceptions, a public hearing is held on the proposed rule.

4. The final draft of the proposed rule is submitted to the governor for approval.

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5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule-making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

Administrative rules promulgated by the Department of Public Instruction

Under current law, the state no longer awards grants to school districts for school breakfast programs; the state now pays 15 cents for each qualifying breakfast served. This bill repeals the Department of Public Instruction (DPI) administrative rules relating to the school breakfast grant program.

Under current law, the state no longer awards grants to school districts for preschool through grade 5 programs. This bill repeals DPI's administrative rules relating to this program.

Under current law, the state no longer awards grants to certain school districts to employ additional school nurses or contract for additional nursing services. This bill repeals DPI's administrative rules relating to these grants.

Under current law, the state no longer awards grants to school districts for science, technology, engineering, and mathematics programs (STEM grants). This bill repeals DPI's administrative rules relating to these grants.

Current law authorizes the state superintendent of public instruction to revoke any license issued by DPI for incompetency or immoral conduct on the part of the licensee. This bill modifies the definition of "immoral conduct" in DPI's administrative rules to conform to the statutory definition of the term.

Current law allows a school board to contract with private, nonprofit, nonsectarian agencies to provide programs for children at risk enrolled in the school district. The statute no longer restricts the percentage of such pupils for whom the school board may contract. This bill eliminates that restriction in DPI's administrative rules.

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

1 **SECTION 1.** 13.92 (4) (bm) of the statutes is created to read:

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1 13.92 (4) (bm) If 2 or more rules filed under s. 227.20 or modified under s.
2 227.265 affect the same unit of the Wisconsin administrative code without taking
3 cognizance of the effect thereon of the other rules and if the legislative reference
4 bureau finds that there is no mutual inconsistency in the changes made by each such
5 rule, the legislative reference bureau shall incorporate the changes made by each
6 rule into the text of the unit and document the incorporation in a note to the unit.
7 For each such incorporation, the legislative reference bureau shall include in a
8 correction bill a provision formally validating the incorporation. Section 227.27 (2)
9 is not affected by printing decisions made by the legislative reference bureau under
10 this paragraph.

11 **SECTION 2.** 13.92 (4) (c) of the statutes is amended to read:

12 13.92 (4) (c) The legislative reference bureau may insert in the Wisconsin
13 administrative code a note explaining any change made under par. (b) or (bm).

14 **SECTION 3.** 13.92 (4) (d) of the statutes is amended to read:

15 13.92 (4) (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not
16 apply to any change made by the legislative reference bureau under par. (b) or (bm).

17 **SECTION 4.** 13.92 (4) (e) of the statutes is amended to read:

18 13.92 (4) (e) The legislative reference bureau shall prepare and keep on file a
19 record of each change made under par. (b) or (bm).

20 **SECTION 5.** 13.92 (4) (f) of the statutes is amended to read:

21 13.92 (4) (f) The legislative reference bureau shall notify the agency involved
22 of each change made under par. (b) or (bm).

23 **SECTION 6.** 35.93 (2) (b) 4. of the statutes, as affected by 2013 Wisconsin Act 20,
24 is amended to read:

SENATE BILL 468**SECTION 6**

1 35.93 (2) (b) 4. Copies of all rules filed with the legislative reference bureau
2 under s. 227.20 (1) or modified under s. 227.265 since the compilation of the
3 preceding register, including emergency rules filed under s. 227.24 (3).

4 **SECTION 7.** 35.93 (2) (c) 1. of the statutes, as affected by 2013 Wisconsin Act 20,
5 is amended to read:

6 35.93 (2) (c) 1. Each chapter of the Wisconsin administrative code that has been
7 affected by rules filed with legislative reference bureau under s. 227.20 (1) or
8 modified under s. 227.265, in accordance with sub. (3) (e) 1.

9 **SECTION 8.** 35.93 (3) of the statutes is amended to read:

10 35.93 (3) The legislative reference bureau shall compile and deliver to the
11 department for printing copy for a register which shall contain all the rules filed
12 under s. 227.20 or modified under s. 227.265 since the compilation of rules for the
13 preceding issue of the register was made and those executive orders which are to be
14 in effect for more than 90 days or an informative summary thereof. The complete
15 register shall be compiled and published before the first day of each month and a
16 notice section of the register shall be compiled and published before the 15th day of
17 each month. Each issue of the register shall contain a title page with the name
18 “Wisconsin administrative register”, the number and date of the register, and a table
19 of contents. Each page of the register shall also contain the date and number of the
20 register of which it is a part in addition to the other necessary code titles and page
21 numbers. The legislative reference bureau may include in the register such
22 instructions or information as in the bureau’s judgment will help the user to correctly
23 make insertions and deletions in the code and to keep the code current.

24 **SECTION 9.** 35.93 (3) (e) (intro.) of the statutes, as affected by 2013 Wisconsin
25 Act 20, is amended to read:

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1 35.93 (3) (e) (intro.) The legislative reference bureau shall incorporate into the
2 appropriate chapters of the Wisconsin administrative code each permanent rule filed
3 with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265
4 and, for each chapter of the administrative code affected by a rule, do all of the
5 following:

6 **SECTION 10.** 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act
7 20, is amended to read:

8 35.93 (3) (e) 1. Publish the chapter in the appropriate end-of-month register
9 in accordance with the filing deadline for publication established in the rules
10 procedures manual published under s. 227.15 (7) ~~or~~, in an end-of-month register
11 agreed to by the submitting agency and the legislative reference bureau, or, in the
12 case of a rule modified under s. 227.265, in the end-of-month register for the month
13 in which the bill modifying the rule is enacted.

14 **SECTION 11.** 227.01 (13) (intro.) of the statutes is amended to read:

15 227.01 (13) (intro.) “Rule” means a regulation, standard, statement of policy,
16 or general order of general application which has the effect of law and which is issued
17 by an agency to implement, interpret, ~~or~~ make specific legislation enforced or
18 administered by the agency or to govern the organization or procedure of the agency.
19 “Rule” includes a modification of a rule under s. 227.265. “Rule” does not include, and
20 s. 227.10 does not apply to, any action or inaction of an agency, whether it would
21 otherwise meet the definition under this subsection, which:

22 **SECTION 12.** 227.11 (2) (intro.) of the statutes is amended to read:

23 227.11 (2) (intro.) Rule-making authority is expressly conferred on an agency
24 as follows:

25 **SECTION 13.** 227.265 of the statutes is created to read:

SENATE BILL 468**SECTION 13**

1 **227.265 Repeal or modification of rules.** If a bill to repeal or modify a rule
2 is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply.
3 Instead, the legislative reference bureau shall publish the repeal or modification in
4 the Wisconsin administrative code and register as required under s. 35.93, and the
5 repeal or modification shall take effect as provided in s. 227.22.

6 **SECTION 14.** 227.27 (2) of the statutes is amended to read:

7 227.27 (2) The code shall be prima facie evidence in all courts and proceedings
8 as provided by s. 889.01, but this does not preclude reference to or, in case of a
9 discrepancy, control over a rule filed with the legislative reference bureau ~~or the~~
10 ~~secretary of state~~ under s. 227.20 or modified under s. 227.265, and the certified copy
11 of a rule shall also and in the same degree be prima facie evidence in all courts and
12 proceedings.

13 **SECTION 15.** PI 25.05 (1) (intro.) of the administrative code is amended to read:

14 PI 25.05 (1) (intro.) The A board of a school district may contract with private,
15 nonprofit, nonsectarian agencies to provide programs for children at risk ~~for not~~
16 ~~more than 30% of the children at risk enrolled in grades 5 through 12~~, if the board
17 determines that the agencies can adequately serve such children. A board
18 contracting under this section shall take all of the following actions:

19 **SECTION 16.** Chapter PI 29 of the administrative code is repealed.

20 **SECTION 17.** Chapter PI 31 of the administrative code is repealed.

21 **SECTION 18.** Chapter PI 33 of the administrative code is repealed.

22 **SECTION 19.** PI 34.35 (1) (c) of the administrative code is amended to read:

23 PI 34.35 (1) (c) “Immoral conduct” ~~means conduct or behavior which is contrary~~
24 ~~to commonly accepted moral or ethical standards and endangers the health, welfare,~~
25 ~~safety or education of any pupil~~ has the meaning given in s. 115.31 (1) (c), Stats.

