



2013 SENATE BILL 608

February 17, 2014 – Introduced by Senators VINEHOUT, MILLER, LASSA and LEHMAN, cosponsored by Representatives CLARK, BERCEAU and OHNSTAD. Referred to Natural Resources.

1 **AN ACT** *to renumber* 227.137 (5), 227.137 (6) (a), 227.137 (6) (b), 227.137 (6) (c)
2 and 227.137 (6) (d); *to renumber and amend* 227.137 (6) (intro.) and 227.137
3 (7); *to amend* 227.135 (2), 227.135 (3), 227.137 (2), 227.137 (3) (intro.), 227.137
4 (4), 227.14 (2) (a) 6., 227.15 (1), 227.17 (3) (em), 227.185, 227.19 (3) (intro.),
5 227.24 (1) (e) 1d. and 227.24 (1) (e) 1g.; and *to create* 227.135 (2m), 227.135 (5),
6 227.137 (2m), 227.137 (3m), 227.137 (4m) and 227.137 (6) (cm) of the statutes;
7 **relating to:** elimination of the requirement that the governor approve a
8 proposed rule that was considered at the joint annual spring fish and wildlife
9 rule hearing of the Department of Natural Resources and county meeting of the
10 Wisconsin Conservation Congress and limitation of the scope of the
11 requirement that an economic impact analysis be prepared for such a proposed
12 rule.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the rule-making process with respect to proposed administrative rules considered at the joint annual spring fish and wildlife

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rule hearing of the Department of Natural Resources and county meeting of the Wisconsin Conservation Congress (spring DNR–WCC meeting).

Gubernatorial approval and statements of scope for proposed rules

Current law requires a statement of scope of a proposed rule to be approved by the governor before a state employee or official may perform any activity in connection with the drafting of the proposed rule. Under this bill, for rules that were considered at the spring DNR–WCC meeting, only the Natural Resources Board (board) is required to approve a statement of scope before those activities may be performed.

Under current law, a state agency must 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. Under the bill, this requirement does not apply to rules that were considered at the spring DNR–WCC meeting.

Under current law, a state agency must 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. Under the bill, a statement of scope is not required for emergency rules considered at the spring DNR–WCC meeting.

Current law requires a state 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 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 Legislative Reference Bureau for publication. The bill eliminates these requirements for gubernatorial approval for rules that were considered at the spring DNR–WCC meeting.

Finally, the bill permits automatic approval of a statement of scope for rules that were considered at the spring DNR–WCC meeting if the board does not disapprove the statement of scope within 30 days after it is presented to the board, or by the eleventh day after its publication in the Wisconsin Administrative Register, whichever is later.

Economic impact analyses for proposed rules

When report must be prepared. Current law requires each state agency to prepare an economic impact analysis for all rules proposed by the agency. It also requires the Department of Administration to issue a report on a proposed rule, and the secretary of administration (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, local governmental units, and individuals as a result of the proposed rule. In addition, current law requires a state 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.

Under this bill, for rules that were considered at the spring DNR–WCC meeting, an economic impact analysis is required only if the secretary directs the analysis to be prepared on the petition of a municipality; an association that

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represents a farm, labor, business, or professional group; or five or more persons who would be affected by the proposed rule. The bill requires the secretary to direct the preparation of such an analysis 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.

Content of analysis. Current law requires certain information to be included in an economic impact analysis, including all of the following:

1. An analysis of the economic impact of the proposed rule, including information on the economic effect on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole.

2. An analysis of alternatives to the proposed rule, including the alternative of not promulgating the rule.

3. A determination made in consultation with the businesses, local governmental units, and individuals potentially 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.

This bill eliminates the requirements that this information be included in an economic impact analysis for rules that were considered at the spring DNR-WCC meeting. Under this bill, an economic impact analysis that is required for rules that were considered at the spring DNR-WCC meeting must instead 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, businesses, governmental units, 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.

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

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

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1 **SECTION 1.** 227.135 (2) of the statutes is amended to read:

2 227.135 (2) ~~An~~ Except as provided in sub. (2m), an agency that has prepared
3 a statement of the scope of the proposed rule shall present the statement to the
4 governor and to the individual or body with policy-making powers over the subject
5 matter of the proposed rule for approval. The agency may not send the statement
6 to the legislative reference bureau for publication under sub. (3) until the governor
7 issues a written notice of approval of the statement. The individual or body with
8 policy-making powers may not approve the statement until at least 10 days after
9 publication of the statement under sub. (3). No state employee or official may
10 perform any activity in connection with the drafting of a proposed rule to which this
11 subsection applies except for an activity necessary to prepare the statement of the
12 scope of the proposed rule until the governor and the individual or body with
13 policy-making powers over the subject matter of the proposed rule approves the
14 statement.

15 **SECTION 2.** 227.135 (2m) of the statutes is created to read:

16 227.135 (2m) If the department of natural resources prepares a statement of
17 the scope of a proposed rule that was considered at the joint annual spring fish and
18 wildlife rule hearing of the department of natural resources and county meeting of
19 the Wisconsin conservation congress, that department shall present the statement
20 to the natural resources board for approval. The natural resources board may not
21 approve the statement until at least 10 days after publication of the statement under
22 sub. (3). If the natural resources board does not disapprove the statement within 30
23 days after the statement is presented to that board or by the 11th day after
24 publication of the statement in the register, whichever is later, the statement is
25 considered to be approved. No state employee or official may perform any activity

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1 in connection with the drafting of a proposed rule to which this subsection applies
2 except for an activity necessary to prepare the statement of the scope of the proposed
3 rule until the natural resources board approves the statement.

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

5 227.135 (3) If the governor approves a statement of the scope of a proposed rule
6 under sub. (2), the agency shall send the statement to the legislative reference
7 bureau for publication in the register. If the natural resources board approves a
8 statement of the scope of a proposed rule under sub. (2m), the department of natural
9 resources shall send the statement to the legislative reference bureau for publication
10 in the register. On the same day that the agency sends the statement to the
11 legislative reference bureau, the agency shall send a copy of the statement to the
12 secretary of administration.

13 **SECTION 4.** 227.135 (5) of the statutes is created to read:

14 227.135 (5) This section does not apply to emergency rules that were
15 considered at the joint annual spring fish and wildlife rule hearing of the department
16 of natural resources and county meeting of the Wisconsin conservation congress.

17 **SECTION 5.** 227.137 (2) of the statutes is amended to read:

18 227.137 (2) An Except as provided in sub. (2m), an agency shall prepare an
19 economic impact analysis for a proposed rule before submitting the proposed rule to
20 the legislative council staff under s. 227.15.

21 **SECTION 6.** 227.137 (2m) of the statutes is created to read:

22 227.137 (2m) After the legislative reference bureau publishes under s. 227.135
23 (3) a statement of the scope of a proposed rule that was considered at the joint annual
24 spring fish and wildlife rule hearing of the department of natural resources and
25 county meeting of the Wisconsin conservation congress, and before that department

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1 submits the notice of the proposed rule to the legislature for review under s. 227.19
2 (2), a municipality, an association that represents a farm, labor, business, or
3 professional group, or 5 or more persons who would be directly and uniquely affected
4 by the proposed rule may submit a petition to the department of administration
5 asking the secretary of administration to direct the department of natural resources
6 to prepare an economic impact analysis for the proposed rule. If the secretary of
7 administration directs the department of natural resources to prepare the economic
8 impact analysis, that department shall prepare the economic impact analysis before
9 submitting the notice of the proposed rule to the legislature for review under s.
10 227.19 (2). The secretary of administration shall direct the department of natural
11 resources to prepare an economic impact analysis for the proposed rule before
12 submitting the notice of the proposed rule to the legislature for review under s.
13 227.19 (2) if the secretary determines that all of the following apply:

14 (a) The petition was submitted to the department of administration no later
15 than 90 days after publication of the statement of the scope of the proposed rule
16 under s. 227.135 (3) or no later than 10 days after publication of the notice for a public
17 hearing under s. 227.17, whichever is later.

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

23 **SECTION 7.** 227.137 (3) (intro.) of the statutes is amended to read:

24 227.137 (3) (intro.) An economic impact analysis of a proposed rule prepared
25 under sub. (2) shall contain information on the economic effect of the proposed rule

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1 on specific businesses, business sectors, public utility ratepayers, local
2 governmental units, and the state's economy as a whole. When preparing the
3 analysis, the agency shall solicit information and advice from businesses,
4 associations representing businesses, local governmental units, and individuals that
5 may be affected by the proposed rule. The agency shall prepare the economic impact
6 analysis in coordination with local governmental units that may be affected by the
7 proposed rule. The agency may request information that is reasonably necessary for
8 the preparation of an economic impact analysis from other businesses, associations,
9 local governmental units, and individuals and from other agencies. The economic
10 impact analysis shall include all of the following:

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

12 227.137 (3m) An economic impact analysis of a proposed rule prepared under
13 sub. (2m) shall contain information on the effect of the proposed rule on specific
14 businesses, business sectors, and the state's economy. When preparing the analysis,
15 the department of natural resources shall solicit information and advice from the
16 Wisconsin Economic Development Corporation and from businesses, associations,
17 governmental units, and individuals that may be affected by the proposed rule. The
18 department of natural resources may request information that is reasonably
19 necessary for the preparation of the economic impact analysis from other state
20 agencies and from businesses, associations, governmental units, and individuals.
21 The economic impact analysis shall include all of the following:

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

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1 (b) An analysis and quantification of the economic impact of the proposed rule,
2 including the costs that are reasonably expected to be incurred by the state,
3 businesses, governmental units, and affected individuals.

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

6 **SECTION 9.** 227.137 (4) of the statutes is amended to read:

7 227.137 (4) On the same day that the agency submits ~~the~~ an economic impact
8 analysis prepared under sub. (2) to the legislative council staff under s. 227.15 (1),
9 the agency shall also submit that analysis to the department of administration, to
10 the governor, and to the chief clerks of each house of the legislature, who shall
11 distribute the analysis to the presiding officers of their respective houses, to the
12 chairpersons of the appropriate standing committees of their respective houses, as
13 designated by those presiding officers, and to the cochairpersons of the joint
14 committee for review of administrative rules. If a proposed rule is modified after the
15 economic impact analysis is submitted under this subsection so that the economic
16 impact of the proposed rule is significantly changed, the agency shall prepare a
17 revised economic impact analysis for the proposed rule as modified. A revised
18 economic impact analysis shall be prepared and submitted in the same manner as
19 an original economic impact analysis is prepared and submitted.

20 **SECTION 10.** 227.137 (4m) of the statutes is created to read:

21 227.137 (4m) The department of natural resources shall submit an economic
22 impact analysis prepared under sub. (2m) to the legislative council staff under s.
23 227.15, to the department of administration, and to the petitioner.

24 **SECTION 11.** 227.137 (5) of the statutes is renumbered 227.137 (8).

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1 **SECTION 12.** 227.137 (6) (intro.) of the statutes, is renumbered 227.137 (6) (am)
2 (intro.) and amended to read:

3 227.137 (6) (am) (intro.) If an economic impact analysis ~~regarding a proposed~~
4 rule prepared under sub. (2) indicates that a total of \$20,000,000 or more in
5 implementation and compliance costs are reasonably expected to be incurred by or
6 passed along to businesses, local governmental units, and individuals as a result of
7 the proposed rule or if an economic impact analysis is prepared under sub. (2m) for
8 a proposed rule that was considered at the joint annual spring fish and wildlife rule
9 hearing of the department of natural resources and county meeting of the Wisconsin
10 conservation congress, the department of administration shall review the proposed
11 rule and issue a report. The agency may not submit a proposed rule to the legislature
12 for review under s. 227.19 (2) until the agency receives a copy of the department's
13 report and the approval of the secretary of administration. The report shall include
14 all of the following findings:

15 **SECTION 13.** 227.137 (6) (a) of the statutes is renumbered 227.137 (6) (am) 1.

16 **SECTION 14.** 227.137 (6) (b) of the statutes is renumbered 227.137 (6) (am) 2.

17 **SECTION 15.** 227.137 (6) (c) of the statutes is renumbered 227.137 (6) (am) 3.

18 **SECTION 16.** 227.137 (6) (cm) of the statutes is created to read:

19 227.137 (6) (cm) No person is entitled to judicial review of any action taken by
20 the department of administration under this subsection with respect to an economic
21 impact analysis prepared under sub. (2m) for a proposed rule that was considered
22 at the joint annual spring fish and wildlife rule hearing of the department of natural
23 resources and county meeting of the Wisconsin conservation congress.

24 **SECTION 17.** 227.137 (6) (d) of the statutes is renumbered 227.137 (6) (am) 4.

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1 **SECTION 18.** 227.137 (7) of the statutes is renumbered 227.137 (6) (bm) and
2 amended to read:

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

11 **SECTION 19.** 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 analysis under s. 227.137 ~~(3) (2) or (2m)~~.

16 **SECTION 20.** 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), (3), and (4), the economic impact analysis
22 required under s. 227.137 (2) or (2m), and any revised economic impact analysis
23 required under s. 227.137 (4). An agency may not hold a public hearing on a proposed
24 rule or give notice under s. 227.19 until after it has received a written report of the
25 legislative council staff review of the proposed rule or until after the initial review

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1 period of 20 working days under sub. (2) (intro.), whichever comes first. An agency
2 may give notice of a public hearing prior to receipt of the legislative council staff
3 report. This subsection does not apply to rules promulgated under s. 227.24.

4 **SECTION 21.** 227.17 (3) (em) of the statutes is amended to read:

5 227.17 (3) (em) The economic impact analysis required under s. 227.137 (2),
6 any revised economic impact analysis required under s. 227.137 (4), and any report
7 prepared by the department of administration under s. 227.137 (6) for that analysis,
8 or a 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 22.** 227.185 of the statutes is amended to read:

11 **227.185 Approval by governor.** After Except as provided in this section,
12 after a proposed rule is in final draft form, the agency shall submit the proposed rule
13 to the governor for approval. The governor, in his or her discretion, may approve or
14 reject the proposed rule. If the governor approves a proposed rule, the governor shall
15 provide the agency with a written notice of that approval. No proposed rule may be
16 submitted to the legislature for review under s. 227.19 (2) unless the governor has
17 approved the proposed rule in writing. This section does not apply to a proposed rule
18 that was considered at the joint annual spring fish and wildlife rule hearing of the
19 department of natural resources and county meeting of the Wisconsin conservation
20 congress.

21 **SECTION 23.** 227.19 (3) (intro.) of the statutes is amended to read:

22 227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be
23 in writing and shall include the proposed rule in the form specified in s. 227.14 (1);
24 the material specified in s. 227.14 (2), (3), and (4); including any statement,
25 suggested changes, or other material submitted to the agency by the small business

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1 regulatory review board; a copy of any economic impact analysis prepared by the
2 agency under s. 227.137 (2) or (2m); a copy of any revised economic impact analysis
3 prepared by the agency under s. 227.137 (4); a copy of any report prepared by the
4 department of administration under s. 227.137 (6); a copy of any energy impact
5 report received from the public service commission under s. 227.117 (2); and a copy
6 of any recommendations of the legislative council staff. The report shall also include
7 all of the following:

8 **SECTION 24.** 227.24 (1) (e) 1d. of the statutes is amended to read:

9 227.24 (1) (e) 1d. Prepare Except as provided in s. 227.135 (5), prepare a
10 statement of the scope of the proposed emergency rule as provided in s. 227.135 (1),
11 obtain approval of the statement as provided in s. 227.135 (2), and send the
12 statement to the legislative reference bureau for publication in the register as
13 provided in s. 227.135 (3). If the agency changes the scope of a proposed emergency
14 rule as described in s. 227.135 (4), the agency shall prepare and obtain approval of
15 a revised statement of the scope of the proposed emergency rule as provided in s.
16 227.135 (4). No state employee or official may perform any activity in connection
17 with the drafting of a proposed emergency rule except for an activity necessary to
18 prepare the statement of the scope of the proposed emergency rule until the governor
19 and the individual or body with policy-making powers over the subject matter of the
20 proposed emergency rule approves the statement.

21 **SECTION 25.** 227.24 (1) (e) 1g. of the statutes is amended to read:

22 227.24 (1) (e) 1g. Submit Except as provided in this subdivision, submit the
23 proposed emergency rule in final draft form to the governor for approval. The
24 governor, in his or her discretion, may approve or reject the proposed emergency rule.
25 If the governor approves a proposed emergency rule, the governor shall provide the

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1 agency with a written notice of that approval. An agency may not file an emergency
2 rule with the legislative reference bureau as provided in s. 227.20 and an emergency
3 rule may not be published until the governor approves the emergency rule in writing.
4 This subdivision does not apply to a proposed emergency rule that was considered
5 at the joint annual spring fish and wildlife rule hearing of the department of natural
6 resources and county meeting of the Wisconsin conservation congress.

7 **SECTION 26. Initial applicability.**

8 (1) GUBERNATORIAL APPROVAL OF RULES. The treatment of sections 227.135 (2),
9 (2m), (3), and (5), 227.185, and 227.24 (1) (e) 1d. and 1g. of the statutes first applies
10 to a proposed administrative rule whose statement of scope is published in the
11 Wisconsin Administrative Register on the effective date of this subsection.

12 (2) ECONOMIC IMPACT REPORTS. The treatment of sections 227.137 (2), (2m), (3)
13 (intro.), (3m), (4), (4m), (5), and (6) (intro.), (a), (b), (c), (cm), (d), and (7), 227.14 (2)
14 (a) 6., 227.15 (1), 227.17 (3) (em), and 227.19 (3) (intro.) of the statutes first applies
15 to a notice of a proposed administrative rule submitted to the legislature under
16 section 227.19 (2) of the statutes on the effective date of this subsection.

17 (END)