

# State of Wisconsin



2017 Assembly Bill 317

Date of enactment: **November 30, 2017**

Date of publication\*: **December 1, 2017**

## 2017 WISCONSIN ACT 108

**AN ACT** to amend 227.135 (2); and to create 13.92 (2) (jg), 35.93 (2) (b) 3. fm., 35.93 (2) (b) 3. gm., 227.138, 227.26 (4) and 227.29 of the statutes; relating to: review by state agencies of administrative rules and enactments; an expedited process for repealing rules an agency no longer has the authority to promulgate; retrospective economic impact analyses for rules; and reporting by the Legislative Reference Bureau on rules in need of revision.

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

**SECTION 1.** 13.92 (2) (jg) of the statutes is created to read:

13.92 (2) (jg) Prior to the end of each even-numbered year, report to the joint committee for review of administrative rules regarding rules in the Wisconsin administrative code that the chief has identified as possibly being in need of revision.

**SECTION 2.** 35.93 (2) (b) 3. fm. of the statutes is created to read:

35.93 (2) (b) 3. fm. Retrospective economic impact analyses for rules under s. 227.138.

**SECTION 3.** 35.93 (2) (b) 3. gm. of the statutes is created to read:

35.93 (2) (b) 3. gm. Petitions and proposed rules submitted under s. 227.26 (4) (b) 1.

**SECTION 4.** 227.135 (2) of the statutes, as affected by [2017 Wisconsin Act 57](#), is amended to read:

227.135 (2) An agency that has prepared a statement of the scope of the proposed rule shall present the statement to the department of administration, which shall make a determination as to whether the agency has the explicit authority to promulgate the rule as proposed in

the statement of scope and shall report the statement of scope and its determination to the governor who, in his or her discretion, may approve or reject the statement of scope. The agency may not send the statement to the legislative reference bureau for publication under sub. (3) until the governor issues a written notice of approval of the statement. The agency shall also present the statement to the individual or body with policy-making powers over the subject matter of the proposed rule for approval. The individual or body with policy-making powers may not approve the statement until at least 10 days after publication of the statement under sub. (3) and, if a preliminary public hearing and comment period are held by the agency under s. 227.136, until the individual or body has received and reviewed any public comments and feedback received from the agency under s. 227.136 (5). No state employee or official may perform any activity in connection with the drafting of a proposed rule, except for an activity necessary to prepare the statement of the scope of the proposed rule until the governor and the individual or body with policy-making powers over the subject matter of the proposed rule approve the statement. This subsection does not prohibit an agency from

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\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

performing an activity necessary to prepare a petition and proposed rule for submission under s. 227.26 (4).

**SECTION 5.** 227.138 of the statutes is created to read:

**227.138 Retrospective economic impact analyses for rules.** (1) The joint committee for review of administrative rules may direct an agency to prepare a retrospective economic impact analysis for any of an agency's rules that are published in the code. The committee may identify one or more specific chapters, sections, or other subunits in the code that are administered by the agency as the rules that are to be the subject of the analysis and may specify a deadline for the preparation of the analysis. A retrospective economic impact analysis shall contain information on the economic effect of the rules on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole. When preparing the analysis, the agency shall solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that have been affected by the rules. The agency shall prepare the retrospective economic impact analysis in coordination with local governmental units that have been affected by the rules. The agency may request information that is reasonably necessary for the preparation of a retrospective economic impact analysis from other businesses, associations, local governmental units, and individuals and from other agencies. The retrospective economic impact analysis shall include all of the following:

(a) An analysis and quantification of the policy problem that the rules were intended to address, including comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem.

(b) An analysis and detailed quantification of the economic impact of the rules, including the implementation and compliance costs that have been incurred by or passed along to the businesses, local governmental units, and individuals that have been affected by the rules.

(c) An analysis of the actual and quantifiable benefits of the rules, including an assessment of how effective the rules have been in addressing the policy problem that the rules were intended to address.

(d) An analysis of alternatives to the rules, including the alternative of repealing the rules.

(e) A determination made in consultation with the businesses, local governmental units, and individuals that have been affected by the rules as to whether the rules have adversely affected in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.

(f) An analysis of the ways in which and the extent to which the rules have placed limitations on the free use of private property, including a discussion of alternatives to the rules that would minimize any such limitations.

(g) A comparison of the actual economic effect of the rules being analyzed to any economic impact analysis that analyzed the expected economic effect of those rules when they were proposed.

(h) Any other information requested by the committee related to the economic impact of the rules.

(2) An agency that prepares a retrospective economic impact analysis under sub. (1) shall submit that analysis to the department of administration, to the governor, and to the chief clerks of each house of the legislature, who shall distribute the analysis to the presiding officers of their respective houses, to the chairpersons of the appropriate standing committees of their respective houses, as designated by those presiding officers, and to the cochairpersons of the joint committee for review of administrative rules. The agency shall also send an electronic copy of the analysis to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register.

**SECTION 6.** 227.26 (4) of the statutes is created to read:

**227.26 (4) REPEAL OF UNAUTHORIZED RULES.** (a) In this subsection, "unauthorized rule" means a rule that an agency lacks the authority to promulgate due to the repeal or amendment of the law that previously authorized its promulgation.

(b) Notwithstanding ss. 227.114 to 227.117 and 227.135 to 227.19, an agency that promulgated or that otherwise administers a rule that the agency determines is an unauthorized rule shall petition the joint committee for review of administrative rules for authorization to repeal that rule by using the following process:

1. The agency shall submit a petition with a proposed rule that repeals the rule the agency has determined is an unauthorized rule to the legislative council staff for review. The proposed rule shall be in the form required under s. 227.14 (1) and shall include the material required under s. 227.14 (2) (a) 1., 2., and 7. and a statement that the agency is petitioning the joint committee for review of administrative rules to use the process under this subsection to repeal a rule the agency has determined to be an unauthorized rule. The agency shall also send an electronic copy of the petition and the proposed rule to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register.

2. The legislative council staff shall review the petition and proposed rule in accordance with s. 227.15 (2) and submit to the joint committee for review of administrative rules the petition and proposed rule with a written report including a statement of its determination as to whether the proposed rule proposes to repeal an unauthorized rule. The legislative council staff shall send the agency a copy of its report with an indication of the date

on which the petition and proposed rule were submitted to the committee.

3. Following receipt of the petition and proposed rule submitted by the legislative council staff under subd. 2., the joint committee for review of administrative rules shall review the petition and proposed rule and may do any of the following:

a. Approve the agency's petition if the committee determines that the proposed rule would repeal an unauthorized rule.

b. Deny the agency's petition.

c. Request that the agency make changes to the proposed rule and resubmit the petition and proposed rule under subd. 1.

4. The committee shall inform the agency in writing of its decision as to the petition.

(c) If the joint committee for review of administrative rules approves a petition to repeal an unauthorized rule as provided in par. (b) 3. a., the agency shall promulgate the proposed rule by filing a certified copy of the rule with the legislative reference bureau under s. 227.20, together with a copy of the committee's decision.

**SECTION 7.** 227.29 of the statutes is created to read:

**227.29 Agency review of rules and enactments. (1)**

By March 31 of each odd-numbered year, each agency with any rules published in the code shall submit a report to the joint committee for review of administrative rules listing all of the following rules promulgated or otherwise administered by that agency:

(a) Unauthorized rules, as defined in s. 227.26 (4) (a), together with a description of the legislation that eliminated the agency's authority to promulgate any such rule.

(b) Rules for which the authority to promulgate has been restricted, together with a description of the legislation that restricted that authority.

(c) Rules that are obsolete or that have been rendered unnecessary, together with a description of why those rules are obsolete or have been rendered unnecessary.

(d) Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction, together with a citation to or the text of any such statute, regulation, or ruling.

(e) Rules that the agency determines are economically burdensome.

(2) The report under sub. (1) shall also include all of the following:

(a) A description of the agency's actions, if any, to address each rule listed in the report. If the agency has not taken any action to address a rule listed in the report, the agency shall include an explanation for not taking action.

(b) A description of the status of each rule listed in the previous year's report not otherwise listed.

(c) If the agency determines that there is no rule as described under sub. (1) (a), (b), (c), (d), or (e), a statement of that determination.

(3) If an agency identifies an unauthorized rule under sub. (1) (a) and is not otherwise in the process of promulgating a rule that repeals the unauthorized rule, the agency shall, within 30 days after the agency submits the report, submit a petition to the legislative council staff under s. 227.26 (4) (b) 1. to repeal the unauthorized rule if the agency has not previously done so.

(4) (a) In this subsection, "enactment" means an act or a portion of an act that is required to be published under s. 35.095 (3) (a).

(b) Each agency shall review enactments to determine whether any part of an enactment does any of the following:

1. Eliminates or restricts the agency's authority to promulgate any rules promulgated or otherwise administered by that agency.

2. Renders any rules promulgated or otherwise administered by that agency obsolete or unnecessary.

3. Renders, for any reason, any rules promulgated or otherwise administered by that agency not in conformity with or superseded by a state statute, including due to statutory numbering or terminology changes in the enactment.

4. Requires or otherwise necessitates rule making by the agency.

(c) If an agency determines that any consequence specified in par. (b) 1. to 4. results from an enactment or part of an enactment, within 6 months after the applicable effective date for the enactment or part of the enactment, the agency shall do one or more of the following, as applicable, to address the consequence identified by the agency and notify the joint committee for review of administrative rules of its action:

1. Submit a statement of the scope of a proposed rule under s. 227.135 (2), unless the enactment requires otherwise or unless the agency submits a notice to the committee explaining why it is unable to submit the statement of scope within that time period and an estimate of when the agency plans to submit the statement of scope.

2. In the case of an affected rule that the agency determines is an unauthorized rule, as defined in s. 227.26 (4) (a), submit a petition to the legislative council staff under s. 227.26 (4) (b) 1.

3. In the case of a consequence specified under par. (b) 3. that can be addressed by the legislative reference bureau using its authority under s. 13.92 (4) (b), submit a request to the legislative reference bureau to use that authority.

**SECTION 8. Initial applicability.**

(1) The treatment of section 227.29 (4) of the statutes first applies to enactments published by the legislative

reference bureau under section 35.095 (3) (a) of the statutes on the effective date of this subsection.

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