ASSEMBLY SUBSTITUTE AMENDMENT 2,

TO ASSEMBLY BILL 384

November 6, 2017 – Offered by Representatives BALLWEG and STEINEKE.

1   AN ACT *to renumber* 227.15 (3); *to amend* 13.56 (3), 227.114 (2) (intro.), 227.15

2   (7) and 990.01 (30m); and *to create* 35.93 (2) (b) 3. gm., 35.93 (2) (b) 3. gn., 35.93

3   (2) (b) 3. gp., 35.93 (2) (c) 2m., 35.93 (3) (g), 227.135 (1) (g), 227.137 (3) (h), 227.15

4   (3) (b), 227.225 and 227.31 of the statutes; **relating to:** informational materials

5   published by an agency and the expiration of administrative rules.

Analysis by the Legislative Reference Bureau

This substitute amendment establishes a process for readopting each chapter of the administrative code every nine years. Under the substitute amendment, any chapter of the administrative code that is not readopted will expire nine years after promulgation.

Under current law, an agency may promulgate administrative rules when it is granted rule–making authority. Once promulgated, administrative rules remain in effect indefinitely unless repealed or amended by the agency or suspended by the Joint Committee for Review of Administrative Rules.

This substitute amendment provides that each chapter of the code expires nine years after a rule that creates or repeals and recreates the chapter takes effect, or after the chapter is readopted. The substitute amendment requires JCRAR to establish a schedule for the expiration or readoption of all existing code chapters that

are in effect on the effective date of the substitute amendment. Under the substitute amendment, two years before a code chapter is set to expire, an agency must send a notice proposing to readopt the chapter to JCRAR and the appropriate standing committees of the legislature. If none of the members of JCRAR or the standing committees object to the readoption notice, the chapter is considered readopted without further action. If one or more members of JCRAR or either standing committee object to readoption of a chapter that is set to expire, JCRAR must meet as a whole and vote on whether to concur in the objection. If JCRAR votes to concur in the objection, the chapter expires on its expiration date unless the agency promulgates a rule to readopt the chapter using the standard rule-making process. Otherwise, the chapter is considered readopted without further action. Under the substitute amendment, JCRAR may extend the effective date of the chapter that is set to expire for up to one year to accommodate readoption of the chapter through the standard rule-making process.

This bill also requires an agency to provide a statutory or administrative rule citation for any statement or interpretation that the agency provides in its informational materials.

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

1   SECTION 1. 13.56 (3) of the statutes is amended to read:

2   13.56 **(3)** POWERS AND DUTIES. The committee has the powers and duties

3   specified under ss. 227.19, <u>227.225,</u> 227.24 and 227.26.

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

5   35.93 **(2)** (b) 3. gm. Notices of readoption of Wisconsin administrative code

6   chapters received under s. 227.225 (2) (a).

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

8   35.93 **(2)** (b) 3. gn. Objections to readoption notices under s. 227.225 (2) (e).

9   SECTION 4. 35.93 (2) (b) 3. gp. of the statutes is created to read:

10   35.93 **(2)** (b) 3. gp. Statements of extension of Wisconsin administrative code

11   chapters received under s. 227.225 (4) (c).

12   SECTION 5. 35.93 (2) (c) 2m. of the statutes is created to read:

1   35.93 **(2)** (c) 2m. Chapters of the Wisconsin administrative code removed under

2   sub. (3) (g).

3   **SECTION 6.** 35.93 (3) (g) of the statutes is created to read:

4   35.93 **(3)** (g) On or after the date that a chapter of the Wisconsin administrative

5   code expires under s. 227.225, the legislative reference bureau shall remove the

6   chapter from the Wisconsin administrative code.

7   **SECTION 7.** 227.114 (2) (intro.) of the statutes is amended to read:

8   227.114 **(2)** (intro.) When an agency ~~proposes or revises~~ promulgates a rule that

9   may have an effect on small businesses, the agency shall consider each of the

10   following methods for reducing the impact of the rule on small businesses:

11   **SECTION 8.** 227.135 (1) (g) of the statutes is created to read:

12   227.135 **(1)** (g) If the rule is a rule to readopt a chapter of the code under s.

13   227.225 (3), a statement to that effect.

14   **SECTION 9.** 227.137 (3) (h) of the statutes is created to read:

15   227.137 **(3)** (h) If the proposed rule seeks to readopt a chapter of the code under

16   s. 227.225 (3), an analysis of how actual costs for the rule compare to a previous

17   economic impact analysis, if any, for a rule affecting the chapter.

18   **SECTION 10.** 227.15 (3) of the statutes is renumbered 227.15 (3) (a).

19   **SECTION 11.** 227.15 (3) (b) of the statutes is created to read:

20   227.15 **(3)** (b) When a proposed readoption notice for a chapter of the code under

21   s. 227.225 (2) is before a standing committee of the legislature or the joint committee

22   for review of administrative rules, the legislative council staff shall report to that

23   committee on what actions, if any, were taken by standing committees or the joint

24   committee for review of administrative rules the last time a readoption notice for that

1 chapter was considered or a rule affecting that chapter of the code was before the

2 legislature under s. 227.19.

3   **Section 12.** 227.15 (7) of the statutes is amended to read:

4   227.15 **(7)** Rules procedures manual. The legislative council staff and the

5 legislative reference bureau shall prepare a manual to provide agencies with

6 information on drafting, promulgation and legislative review of rules. The manual

7 shall prescribe the format for readoption rules under s. 227.225 (3).

8   **Section 13.** 227.225 of the statutes is created to read:

9   **227.225 Expiration and readoption of rules. (1)** (a) Each chapter of the

10 code expires on the January 1 of the 9th year after one of the following:

11   1. The year in which a rule creating or repealing and recreating that chapter

12 of the code took effect as provided in s. 227.22, unless the rule provides for an earlier

13 repeal date.

14   2. The year in which the chapter was readopted under sub. (2) (d) or (e).

15   3. For a chapter that is readopted under sub. (3), the year after the year in

16 which the readoption notice for that chapter was filed under sub. (2) (a), unless the

17 readopted chapter provides for an earlier repeal date.

18   (b) 1. Notwithstanding par. (a), a chapter of the code that was in effect on the

19 effective date of this subdivision .... [LRB inserts date], and that is not repealed and

20 recreated by a rule prior to January 1, 2030, shall expire in accordance with the

21 schedule established under subd. 2. unless it is repealed earlier.

22   2. The joint committee for review of administrative rules, in consultation with

23 the affected agencies, shall, no later than December 1, 2018, establish a schedule for

24 the expiration of all chapters described under subd. 1. The schedule may provide for

25 the expiration of code chapters on any January 1 beginning with January 1, 2021,

1   and ending with January 1, 2030. The joint committee for review of administrative

2   rules shall have the schedule published on the legislature's Internet site and in the

3   register and shall provide a copy of the schedule to each affected agency.

4   (c) A change made by the legislative reference bureau under s. 13.92 (4) (b) does

5   not affect a chapter's expiration date under par. (a) or (b).

6   (d) This subsection does not apply to emergency rules promulgated under s.

7   227.24.

8   **(2)** (a) No earlier than January 1 and no later than March 1 of the year that

9   is 2 years before the expiration date of a chapter of the code under sub. (1), an agency

10   shall submit a notice to the chief clerk of each house of the legislature and to the joint

11   committee for review of administrative rules that it intends to readopt the chapter.

12   The notice shall be submitted in triplicate. An agency may include multiple chapters

13   in a given notice. The presiding officer of each house of the legislature shall, within

14   10 working days after the date on which the notice is received, direct the appropriate

15   chief clerk to refer the notice to one standing committee and to enter a statement that

16   a proposed code chapter readoption notice has been received in the journal of his or

17   her house. The agency shall submit a copy of the notice, in an electronic format

18   approved by the legislative reference bureau, to the legislative reference bureau for

19   publication in the register. The notice shall contain all of the following:

20   1. A brief statement explaining the basis and purpose of the chapter.

21   1m. A statement as to whether the agency recommends that the chapter be

22   readopted, readopted with changes through the rule–making process under sub. (3),

23   or allowed to expire.

24   2. A reference to each statute that is interpreted by any rules contained in the

25   chapter, each statute that authorizes the promulgation of any rules contained in that

1   chapter, and an explanation of the agency's authority to promulgate the rules

2   contained in the chapter under those statutes.

3   3. A statement as to whether all rules contained in the chapter are in

4   compliance with the requirements under this subchapter and whether they are in

5   need of revision due to changes to state or federal law or for any other reason. If any

6   such revisions are needed, the notice shall also indicate what, if any, plans the agency

7   has to revise the chapter. This statement may also contain a statement as to whether

8   any statutorily required rules in the chapter are obsolete or have been rendered

9   unnecessary and whether the agency recommends a statutory change so that the

10   rules can be repealed.

11   4. A list of all guidance documents that the agency has developed relating to

12   the chapter. Upon request of any member of either standing committee to which the

13   notice is referred or any member of the joint committee for review of administrative

14   rules, the agency shall provide the member with a copy of any such guidance

15   document.

16   (b) Upon receipt of a readoption notice under par. (a), the chairperson or

17   chairpersons of each standing committee and the joint committee for review of

18   administrative rules shall provide a copy of the notice to each other member of the

19   committee.

20   (c) 1. The review period for each standing committee and the joint committee

21   for review of administrative rules extends for 30 working days after the agency

22   submits a readoption notice under par. (a).

23   2. Any member of either standing committee or of the joint committee for

24   review of administrative rules may object to readoption of a code chapter included

25   in the notice within the review period under subd. 1.

1   3. A member shall submit an objection under subd. 2. in writing to the

2   chairperson or cochairpersons of the committee. The member shall specify which

3   sections in a given chapter the member objects to and shall explain the reasons for

4   his or her objection.

5   4. If a committee member objects to the readoption of a code chapter, the

6   chairperson or chairpersons of the committee shall provide a copy of the objection to

7   each other committee that received the notice under par. (a), to the agency that

8   submitted the notice, and to the legislative reference bureau.

9   (d) If the review period under par. (c) 1. expires without a notice of objection

10   being filed to a code chapter under par. (c) 2., the chapter shall be considered

11   readopted for purposes of sub. (1) (a) without further action.

12   (e) If one or more notices of objection are filed to a code chapter under par. (c)

13   2. within the review period under par. (c) 1., the joint committee for review of

14   administrative rules shall, within 30 working days after the date the review period

15   under par. (c) 1. expires, meet and take action in executive session to act on the

16   objections. If the committee votes to concur in the objection, it shall file a statement

17   of its action with the agency and the legislative reference bureau for publication in

18   the register and the chapter shall, subject to sub. (4), expire on its expiration date

19   unless the agency promulgates a rule under sub. (3) to readopt the chapter. If the

20   committee does not vote to concur in the objection, the chapter shall be considered

21   readopted for purposes of sub. (1) (a) without further action.

22   **(3)** If the joint committee for review of administrative rules votes to concur in

23   the objection to the readoption of a code chapter under sub. (2) (e), the agency may,

24   using the rule-making process in this chapter, promulgate a rule to readopt the

1   chapter. All of the following apply with respect to a rule promulgated under this

2   subsection:

3   (a) An agency may not propose to readopt more than one chapter per rule.

4   (am) An agency may not submit a statement of scope under s. 227.135 for a

5   proposed rule to readopt a chapter under this subsection after the chapter has

6   expired under sub. (1).

7   (b) An agency may propose to readopt the chapter without changes or may

8   propose changes to the chapter.

9   (c) A rule promulgated under this subsection to readopt a chapter may take

10 effect after the chapter's expiration date, but rules contained in the chapter may not

11 be enforced during the period between the date the chapter expires and the date the

12 rule to readopt the chapter takes effect under s. 227.22.

13   **(4)** (a)   At the request of the agency, the joint committee for review of

14 administrative rules may, at any time after the agency receives a notice of objection

15 to a chapter under sub. (2) (e) but prior to the expiration date of the chapter, extend

16 the expiration date for the chapter for a period specified by the committee not to

17 exceed one year.

18   (b) Any request by an agency to extend the effective date of a chapter shall be

19 made in writing to the joint committee for review of administrative rules no later

20 than 30 days before the expiration date of the chapter.

21   (c) Whenever the committee extends an expiration date for a chapter under par.

22 (a), it shall file a statement of its action with the agency and the legislative reference

23 bureau for publication in the register.

24   (d) An agency may not promulgate an emergency rule under s. 227.24 for the

25 purpose of extending a rule that is subject to expiration under this section.

1   **SECTION 14.** 227.31 of the statutes is created to read:

2   **227.31 Agency publications.** An agency shall identify the applicable

3   provision of federal law or state statutory provision or section of administrative code

4   that supports any statement or interpretation of law that the agency makes in any

5   publication, whether in print or on the agency's Internet site, including forms,

6   pamphlets, or other informational materials, regarding the laws the agency

7   administers.

8   **SECTION 15.** 990.01 (30m) of the statutes is amended to read:

9   990.01 **(30m)** PROMULGATE. "Promulgate," when used in connection with a rule,

10   as defined under s. 227.01 (13), means to repeal; renumber; consolidate, renumber

11   and amend; renumber and amend; amend; repeal and recreate; readopt; or create.

12   **SECTION 16. Initial applicability.**

13   (1) The treatment of section 227.31 of the statutes with respect to printed

14   publications first applies to forms, pamphlets, or other informational materials that

15   are printed 60 days after the effective date of this subsection.

16   **(END)**