

**2017 Senate Bill 15 (LRB -1338)**

An Act to repeal 227.137 (6) and (7) and 227.17 (3) (em); to renumber and amend 227.137 (3) (b) and 227.16 (6); to amend 227.12 (4), 227.135 (2), 227.135 (3), 227.137 (3) (intro.) and (a), 227.14 (4m), 227.15 (1), 227.15 (1m) (bm), 227.16 (1), 227.17 (1) (intro.), 227.185, 227.19 (3) (intro.), 227.19 (3) (c), 227.19 (4) (b) 1. (intro.), 227.19 (5) (b) 1. (intro.), 227.24 (1) (a), 227.24 (1) (e) 1d. and 227.24 (4); and to create 20.765 (1) (kt), 35.93 (2) (b) 3. bm., 227.136, 227.137 (3) (b) 1. and 2., 227.137 (4m), 227.139, 227.14 (2) (a) 3m., 227.17 (3) (eg) and 227.19 (5) (b) 3. of the statutes; relating to: various changes regarding administrative rules and rule-making procedures and making an appropriation. (FE)

2017

01-26.	S.	Introduced by Senators <b>LeMahieu, Darling, Kapenga, Lasee, Marklein, Nass, Stroebel, Tiffany and Vukmir</b> ; cosponsored by Representatives <b>Neylon, Jarchow, Brandtjen, Duchow, E. Brooks, Edming, Gannon, Jacque, Jagler, Katsma, Kleefisch, Kooyenga, Kremer, Krug, Kulp, Murphy, Petersen, Quinn, R. Brooks, Ripp, Rodriguez, Schraa, Spiros, Summerfield, Swearingen, Thiesfeldt, Tittl, Tranel, Tusler, Vorpapel, Weatherston, Wichgers, Hutton, Sanfelippo and Tauchen.</b> ....	55
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- 06-14. A. Assembly Amendment 3 offered by Representatives Hesselbein, Barca, Zamarripa, Hebl, Ohnstad, Anderson, Kolste, Vruwink and Spreitzer (**LRB a0548**)
- 06-14. A. Assembly Amendment 3 laid on table, Ayes 62, Noes 33
- 06-14. A. Assembly Amendment 4 offered by Representatives Mason, Barca, Spreitzer, Hesselbein, Vruwink, Hebl, Kolste, Sinicki and Anderson (**LRB a0727**)
- 06-14. A. Assembly Amendment 4 laid on table, Ayes 62, Noes 33
- 06-14. A. Ordered to a third reading
- 06-14. A. Rules suspended
- 06-14. A. Read a third time and **concurred in**, Ayes 62, Noes 34
- 06-14. A. Ordered immediately messaged
- 06-15. S. Received from Assembly concurred in

9MB



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2017 ENROLLED BILL

**Adopted Documents**

Original

Engrossed

Substitute Amdt

17 s 0058, 2

Amendments:  None or  Listed below.

SA 1 to SSA 1

Corrections:  None or  Listed by date below.

Topic:  Same as relating clause or  other, indicated below.

6/15/17

Cas...

Date

Enrolling Drafter



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRBs0058/2  
MED:ahe

**SENATE SUBSTITUTE AMENDMENT 1,  
TO SENATE BILL 15**

April 24, 2017 - Offered by Senator LEMAHIEU.

1     **AN ACT to repeal** 227.137 (6) and (7) and 227.17 (3) (em); **to renumber and**  
2     **amend** 227.137 (3) (b) and 227.16 (6); **to amend** 227.12 (4), 227.135 (2),  
3     227.135 (3), 227.137 (3) (intro.) and (a), 227.14 (4m), 227.15 (1), 227.15 (1m)  
4     (bm), 227.16 (1), 227.17 (1) (intro.), 227.185, 227.19 (3) (intro.), 227.19 (3) (c),  
5     227.19 (4) (b) 1. (intro.), 227.19 (5) (b) 1. (intro.), 227.19 (5) (d), 227.19 (5) (dm),  
6     227.19 (5) (em), 227.19 (5) (f) (title), 227.19 (5) (fm), 227.19 (6) (b), 227.24 (1) (a),  
7     227.24 (1) (e) 1d. and 227.24 (4); and **to create** 35.93 (2) (b) 3. bm., 227.136,  
8     227.137 (3) (b) 1. and 2., 227.137 (4m), 227.139, 227.14 (2) (a) 3m., 227.17 (3)  
9     (eg) and 227.19 (5) (b) 3. of the statutes; **relating to:** various changes regarding  
10     administrative rules and rule-making procedures.

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***Analysis by the Legislative Reference Bureau***

This substitute amendment 1) requires scope statements for proposed administrative rules to be reviewed by the Department of Administration for a determination of an agency's authority to promulgate a rule; 2) requires agencies to

hold preliminary public hearings and comment periods on scope statements for rules if directed to do so by the Joint Committee for Review of Administrative Rules (JCRAR); 3) requires the passage of a bill in order for an agency to promulgate a rule that would result in implementation and compliance costs of \$10 million over any two-year period, subject to certain exceptions; 4) allows either a cochairperson of JCRAR or JCRAR as a whole, at certain steps in the rule-making process, to request the preparation of an independent economic impact analysis for a proposed rule; and 5) allows JCRAR to make an indefinite objection to a proposed rule to prevent the agency from promulgating the rule.

#### CURRENT LAW

Current law sets forth the procedure for promulgating administrative 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 (scope statement), which must be approved by the governor and the agency head 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, the agency holds a public hearing on the proposed rule.

4. The final draft of the proposed rule is submitted to the governor for approval who, in his or her discretion, may approve or reject the proposed rule.

5. The final draft of the proposed rule, together with a report including certain information, is submitted to the legislature for review by one standing committee in each house and by JCRAR.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in 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 of the rule changes in the Wisconsin Administrative Code.

An agency may also promulgate rules as emergency rules if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the requirements for permanent rules. The emergency rules procedure varies from the procedure for permanent rules in a number of ways and includes exemptions from some of the steps required for permanent rules. Emergency rules may generally remain in effect for up to 150 days, but may be extended for up to an additional 120 days by JCRAR.

#### THE SUBSTITUTE AMENDMENT

The substitute amendment makes various changes regarding the rule-making procedures established under current law. Significant changes regarding those procedures are described below.

#### ***Submission statements of scope to DOA***

The substitute amendment requires scope statements for proposed rules to be submitted to DOA instead of to the governor. Following the submission, the

substitute amendment requires DOA to make a determination as to whether the agency has the explicit authority to promulgate the proposed rule and report its determination to the governor, who may then approve or reject the statement of scope as under current law.

***Preliminary public hearings and comment periods on scope statements***

The substitute amendment requires an agency, following approval of a scope statement by the governor, to hold a preliminary public hearing and comment period on a scope statement if directed to do so by a cochairperson of JCRAR. Following such a directive, the agency must submit to the LRB a notice of the hearing and comment period to allow for public comment and feedback on the scope statement. The agency must hold the preliminary public hearing no sooner than the third day after publication of the notice in the register and submit all comments and feedback received to the agency head. A preliminary public hearing and comment period under the substitute amendment is in addition to the public hearing required under current law for certain rules.

***Passage of bill required for certain rules***

The substitute amendment provides that if an economic impact analysis, a revised economic impact analysis, or an independent economic impact analysis for a proposed rule indicates that \$10 million or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over any two-year period as a result of the proposed rule, the agency proposing the rule must stop work on the proposed rule and may not continue to promulgate the rule except as follows:

1. The agency may resume the rule-making procedure for the proposed rule upon enactment of a bill that authorizes its promulgation.
2. The agency may modify the proposed rule to address the implementation and compliance costs of the proposed rule. If a revised economic impact analysis prepared by an agency and any independent economic impact analysis prepared following the modification all indicate that \$10 million or more in implementation and compliance costs are not reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over a two-year period as a result of the proposed rule, the agency may then resume the rule-making procedure for the proposed rule.

The substitute amendment exempts from these provisions certain proposed rules of the Department of Natural Resources relating to air quality that are necessary to comply with an explicit call for a state implementation plan by the federal Environmental Protection Agency under the federal Clean Air Act.

***Independent economic impact analyses***

The substitute amendment allows a cochairperson of JCRAR, after an agency submits a copy of an economic impact analysis for a proposed rule to the legislature, but before the proposed rule is submitted for final approval by the governor, to request that an independent economic impact analysis be prepared for the proposed rule. In that case, the cochairperson must contract for the preparation of the independent economic impact analysis. The person preparing the independent economic impact analysis must complete the independent economic impact analysis

within 60 days and must include most of the same information and analysis that is required for an economic impact analysis prepared by an agency. If an independent economic impact analysis is requested for a proposed rule, an agency may not submit the proposed rule to the governor for final approval until the agency receives the completed independent economic impact analysis. The substitute amendment specifies circumstances under which either the agency or the legislature must pay the costs of the independent economic impact analysis or, for certain independent economic impact analyses, requires the Joint Committee on Finance to specify the funding source for the costs.

In addition, the substitute amendment allows JCRAR, when a proposed rule is before JCRAR for final review, to request an independent economic impact analysis for the proposed rule. If JCRAR requests an independent economic impact analysis at that time, the analysis must similarly be completed within 60 days and JCRAR's review period is extended to the tenth working day following receipt by JCRAR of the completed analysis.

### ***Indefinite objections to proposed rules***

Under current law, when a proposed administrative rule is in final draft form following its approval by the governor, the agency proposing the rule must submit the rule for review by one standing committee in each house of the legislature. A standing committee to which a rule is referred may take certain actions with respect to the proposed rule, including objecting to the proposed rule. Following review by the standing committees, the rule is then referred to JCRAR, which may also object to the proposed rule, regardless of any standing committee objection. Subject to an exception for certain rules promulgated by the Department of Safety and Professional Services, if JCRAR objects to a proposed rule, JCRAR must introduce bills to support the objection in each house of the legislature. The objection, however, is temporary in that unless one of those bills is enacted, the agency may promulgate the proposed rule or part of the proposed rule that was objected to. A temporary objection may be made only for one of several specified reasons.

Under the exception, however, an objection to a DSPS rule that would increase the cost of home construction or remodeling by more than \$1,000 is indefinite in that if JCRAR objects to the proposed rule, DSPS may not promulgate the proposed rule unless a bill that authorizes its promulgation is enacted. Such a bill may be introduced by any member of the legislature.

This substitute amendment expands the exception described above so that JCRAR may make an indefinite objection to any proposed rule, thereby requiring the enactment of a bill in order for the proposed rule to be promulgated. The substitute amendment allows an indefinite objection to be made for any of the reasons specified for temporary objections. Under the substitute amendment, therefore, JCRAR may make either a temporary or an indefinite objection to a proposed rule and must, when making an objection to a proposed rule, specify which type of objection it is making.

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

1           **SECTION 1.** 35.93 (2) (b) 3. bm. of the statutes is created to read:

2           35.93 (2) (b) 3. bm. Notices of preliminary public hearings and comment periods  
3           under s. 227.136.

4           **SECTION 2.** 227.12 (4) of the statutes is amended to read:

5           227.12 (4) If a petition to the department of revenue establishes that the  
6           department has established a standard by which it is construing a state tax statute,  
7           but has not promulgated a rule to adopt the standard or published the standard in  
8           a manner that is available to the public, the department shall, as provided under s.  
9           227.135, submit a statement of the scope of the proposed rule to the ~~governor~~  
10          department of administration no later than 90 days after receiving the petition. No  
11          later than 270 days after the statement is approved by the governor, the department  
12          shall submit the proposed rule in final draft form to the governor for the governor's  
13          approval, as provided under s. 227.185. At the department's request, the governor  
14          or the department of administration may, at any time prior to the expiration of any  
15          deadline specified in this subsection, extend the time for submitting the statement  
16          or proposed rule in draft form for any period not to exceed 60 days. The governor or  
17          the department of administration may grant more than one extension under this  
18          subsection, but the total period for all such extensions may not exceed 120 days. The  
19          rule need not adhere to the standard established by the department, but shall  
20          address the same circumstances as the standard addresses. If the department fails  
21          to comply with this subsection, any of the petitioners may commence an action in  
22          circuit court to compel the department's compliance. If an action is commenced  
23          under this subsection, the court may compel the department to provide information  
24          to the court related to the degree to which the department is enforcing the standard,



1 except that the information provided by the department shall not disclose the  
2 identity of any person who is not a party to the action.

3 **SECTION 3.** 227.135 (2) of the statutes is amended to read:

4 227.135 (2) An agency that has prepared a statement of the scope of the  
5 proposed rule shall present the statement to the ~~governor and to the individual or~~  
6 ~~body with policy-making powers over the subject matter of the proposed rule for~~  
7 approval department of administration, which shall make a determination as to  
8 whether the agency has the explicit authority to promulgate the rule as proposed in  
9 the statement of scope and shall report the statement of scope and its determination  
10 to the governor who, in his or her discretion, may approve or reject the statement of  
11 scope. The agency may not send the statement to the legislative reference bureau  
12 for publication under sub. (3) until the governor issues a written notice of approval  
13 of the statement. The agency shall also present the statement to the individual or  
14 body with policy-making powers over the subject matter of the proposed rule for  
15 approval. The individual or body with policy-making powers may not approve the  
16 statement until at least 10 days after publication of the statement under sub. (3) and,  
17 if a preliminary public hearing and comment period are held by the agency under s.  
18 227.136, until the individual or body has received and reviewed any public comments  
19 and feedback received from the agency under s. 227.136 (5). No state employee or  
20 official may perform any activity in connection with the drafting of a proposed rule,  
21 except for an activity necessary to prepare the statement of the scope of the proposed  
22 rule until the governor and the individual or body with policy-making powers over  
23 the subject matter of the proposed rule approve the statement.

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

1           227.135 (3) If the governor approves a statement of the scope of a proposed rule  
2 under sub. (2), the agency shall send an electronic copy of the statement to the  
3 legislative reference bureau, in a format approved by the legislative reference  
4 bureau, for publication in the register. On the same day that the agency sends the  
5 statement to the legislative reference bureau, the agency shall send a copy of the  
6 statement to the secretary of administration and to the chief clerks of each house of  
7 the legislature, who shall distribute the statement to the cochairpersons of the joint  
8 committee for review of administrative rules. The agency shall include with any  
9 statement of scope sent to the legislative reference bureau the date of the governor's  
10 approval of the statement of scope. The legislative reference bureau shall assign a  
11 discrete identifying number to each statement of scope and shall include that  
12 number and the date of the governor's approval in the publication of the statement  
13 of scope in the register.

14           **SECTION 5.** 227.136 of the statutes is created to read:

15           **227.136 Preliminary public hearing and comment period.** (1) Within  
16 10 days after publication of a statement of the scope of a proposed rule under s.  
17 227.135 (3), either cochairperson of the joint committee for the review of  
18 administrative rules may submit a written directive to the agency that prepared the  
19 statement for the agency to hold a preliminary public hearing and comment period  
20 on the statement of scope as provided in this section.

21           (2) If the agency is directed to hold a preliminary public hearing and comment  
22 period on a statement of scope as provided in sub. (1) or if the agency otherwise opts  
23 to do so on its own initiative, the agency shall submit to the legislative reference  
24 bureau, in a format approved by the legislative reference bureau, a notice of a  
25 preliminary public hearing and comment period to allow for public comment and

1 feedback on the statement of scope. The agency may also take any other action it  
2 considers necessary to provide notice of the preliminary public hearing and comment  
3 period to other interested persons. The notice shall be approved by the individual  
4 or body with policy-making powers over the subject matter of the proposed rule and  
5 shall include all of the following:

6 (a) A statement of the date, time, and place of the preliminary public hearing.

7 (b) The place where comments on the statement of scope should be submitted  
8 and the deadline for submitting those comments.

9 (3) The agency shall hold the preliminary public hearing and comment period  
10 in accordance with the notice required under sub. (2), but may not hold the hearing  
11 sooner than the 3rd day after publication of the notice in the register.

12 (4) The agency shall conduct a hearing under this section in accordance with  
13 s. 227.18.

14 (5) The agency shall report all public comments and feedback on the statement  
15 of scope of the proposed rule that the agency receives at the preliminary public  
16 hearing and comment period to the individual or body with policy-making powers  
17 over the subject matter of the proposed rule.

18 (6) Failure of any person to receive notice of a preliminary public hearing as  
19 provided in this section is not grounds for invalidating any resulting rule if notice of  
20 the hearing was published in the register in accordance with s. 35.93 (2) (b) 3. bm.

21 **SECTION 6.** 227.137 (3) (intro.) and (a) of the statutes are amended to read:

22 227.137 (3) (intro.) An economic impact analysis of a proposed rule shall  
23 contain information on the economic effect of the proposed rule on specific  
24 businesses, business sectors, public utility ratepayers, local governmental units, and  
25 the state's economy as a whole. ~~When~~ The agency or person preparing the analysis,

1 ~~the agency~~ shall solicit information and advice from businesses, associations  
2 representing businesses, local governmental units, and individuals that may be  
3 affected by the proposed rule. The agency or person shall prepare the economic  
4 impact analysis in coordination with local governmental units that may be affected  
5 by the proposed rule. The agency or person may also request information that is  
6 reasonably necessary for the preparation of an economic impact analysis from other  
7 businesses, associations, local governmental units, and individuals and from other  
8 agencies. The economic impact analysis shall include all of the following:

9 (a) An analysis and quantification of the policy problem that the proposed rule  
10 is intending to address, including comparisons with the approaches used by the  
11 federal government and by Illinois, Iowa, Michigan, and Minnesota to address that  
12 policy problem ~~and, if, if~~ the approach chosen by the agency to address that policy  
13 problem is different from those approaches, an economic impact analysis prepared  
14 by an agency shall include a statement as to why the agency chose a different  
15 approach.

16 **SECTION 7.** 227.137 (3) (b) of the statutes is renumbered 227.137 (3) (b) (intro.)  
17 and amended to read:

18 227.137 (3) (b) (intro.) An analysis and detailed quantification of the economic  
19 impact of the proposed rule, including the implementation and compliance costs that  
20 are reasonably expected to be incurred by or passed along to the businesses, local  
21 governmental units, and individuals that may be affected by the proposed rule.,  
22 specifically including all of the following:

23 **SECTION 8.** 227.137 (3) (b) 1. and 2. of the statutes are created to read:

24 227.137 (3) (b) 1. An estimate of the total implementation and compliance costs  
25 that are reasonably expected to be incurred by or passed along to businesses, local

1 governmental units, and individuals as a result of the proposed rule, expressed as  
2 a single dollar figure. With respect to an independent economic impact analysis  
3 prepared under sub. (4m) or s. 227.19 (5) (b) 3., the person preparing the analysis  
4 shall provide a detailed explanation of any variance from the agency's estimate  
5 under this subdivision.

6 2. A determination, for purposes of the requirement under s. 227.139, as to  
7 whether \$10,000,000 or more in implementation and compliance costs are  
8 reasonably expected to be incurred by or passed along to businesses, local  
9 governmental units, and individuals over any 2-year period as a result of the  
10 proposed rule.

11 SECTION 9. 227.137 (4m) of the statutes is created to read:

12 227.137 (4m) (a) After an agency submits an economic impact analysis for a  
13 proposed rule to the legislature under sub. (4), but before the agency submits the  
14 proposed rule for approval under s. 227.185, either cochairperson of the joint  
15 committee for review of administrative rules may request an independent economic  
16 impact analysis to be prepared for the proposed rule.

MS  
SAI  
1. 17 (b) 1. If a cochairperson of the joint committee for review of administrative rules  
18 requests an independent economic impact analysis under par. (a), the cochairperson  
19 shall notify the agency proposing the proposed rule and shall contract with a person  
20 that is not an agency to prepare the independent economic impact analysis.

21 2. Costs of completing an independent economic impact analysis shall be paid  
22 as follows:

23 a. If the estimate in the independent economic impact analysis of total  
24 implementation and compliance costs under sub. (3) (b) 1. varies from the agency's  
25 estimate by 15 percent or more or varies from the agency's determination that there

and the request is approved under  
par. (am);

SA-1  
2.

1 will be no implementation or compliance costs, the cochairperson shall assess the  
2 agency that is proposing the proposed rule for the costs of completing the  
3 independent economic impact analysis.

4 b. If the estimate in the independent economic impact analysis of total  
5 implementation and compliance costs under sub. (3) (b) 1. does not vary from the  
6 agency's estimate by 15 percent or more or is in accord with the agency's  
7 determination that there will be no implementation and compliance costs, the costs  
8 of completing the independent economic impact analysis shall be paid from the  
9 appropriation account that corresponds to his or her house of the legislature under  
10 s. 20.765 (1) (a) or (b).

11 c. Notwithstanding subd. 2. a. and b., if the maximum potential obligation  
12 under the contract for completing the independent economic impact analysis exceeds  
13 \$50,000, the cochairperson of the joint committee for review of administrative rules  
14 who is requesting the independent economic impact analysis shall submit the  
15 proposed contract to the joint committee on finance for the purpose of determining  
16 the funding source for the costs of completing the independent economic impact  
17 analysis, and the costs of completing the independent economic impact analysis shall  
18 be paid as provided by the joint committee on finance. If the joint committee on  
19 finance does not act to determine the funding source within 90 days, the costs of  
20 completing the independent economic impact analysis shall be paid as provided in  
21 subd. 2. a. and b.

22 (c) A person preparing an independent economic impact analysis under par. (b)  
23 shall do all of the following:

24 1. Include in the analysis the information that is required under sub. (3).

1           2. Upon completion of the analysis, submit the analysis to the agency, to the  
2 department of administration, to the governor, and to the chief clerks of each house  
3 of the legislature, who shall distribute the analysis to the presiding officers of their  
4 respective houses, to the chairpersons of the appropriate standing committees of  
5 their respective houses, as designated by those presiding officers, and to the  
6 cochairpersons of the joint committee for review of administrative rules.

7           3. Complete the independent economic impact analysis within 60 days after  
8 contracting to prepare the analysis.

9           (d) When an independent economic impact analysis is requested under par. (a),  
10 the agency may not submit the proposed rule for approval under s. 227.185 until the  
11 agency receives the completed independent economic impact analysis.

12           **SECTION 10.** 227.137 (6) and (7) of the statutes are repealed.

13           **SECTION 11.** 227.139 of the statutes is created to read:

14           **227.139 Passage of bill required for certain rules.** (1) If an economic  
15 impact analysis prepared under s. 227.137 (2), a revised economic impact analysis  
16 prepared under s. 227.137 (4), or an independent economic impact analysis prepared  
17 under s. 227.137 (4m) or 227.19 (5) (b) 3. indicates that \$10,000,000 or more in  
18 implementation and compliance costs are reasonably expected to be incurred by or  
19 passed along to businesses, local governmental units, and individuals over any  
20 2-year period as a result of the proposed rule, the agency proposing the rule shall  
21 stop work on the proposed rule and may not continue promulgating the proposed rule  
22 notwithstanding any provision authorizing or requiring the agency to promulgate  
23 the proposed rule, except as authorized under sub. (2).

24           (2) (a) Any member of the legislature may introduce a bill authorizing an  
25 agency to promulgate a rule that the agency is prohibited from promulgating under

1 sub. (1). The agency may resume the rule-making process as provided in this  
2 subchapter upon enactment of a bill introduced under this paragraph.

3 (b) If an agency is prohibited from promulgating a rule under sub. (1), the  
4 agency may modify the proposed rule, if the modification is germane to the subject  
5 matter of the proposed rule, to address the implementation and compliance costs of  
6 the proposed rule. If the agency modifies a proposed rule under this paragraph, the  
7 agency shall prepare a revised economic impact analysis under s. 227.137 (4).  
8 Following the modification, the agency may continue with the rule-making process  
9 as provided in this subchapter if the revised economic impact analysis prepared by  
10 the agency indicates, and any independent economic impact analysis prepared under  
11 s. 227.137 (4m) or 227.19 (5) (b) 3. subsequent to the agency's modification also  
12 indicates, that \$10,000,000 or more in implementation and compliance costs are not  
13 reasonably expected to be incurred by or passed along to businesses, local  
14 governmental units, and individuals over any 2-year period as a result of the  
15 proposed rule.

16 (3) This section does not apply to rules promulgated under s. 227.24.

17 (4) (a) This section does not apply to a proposed rule of the department of  
18 natural resources relating to air quality if all of the following apply:

19 1. The rule is necessary to comply with an explicit call for a state  
20 implementation plan by the federal environmental protection agency under 42 USC  
21 7410 (a) (1), 42 USC 7411 (c) (1) or (d) (1), or 42 USC 7412 (l) (1).

22 2. Any standard, requirement, or limitation proposed in the rule is consistent  
23 with and no more stringent in substance or form than what is required under the  
24 federal clean air act, 42 USC 7401 to 7671q, and regulations issued by the federal  
25 environmental protection agency under that act.



1           3. The rule proposes to regulate only those emissions or substances explicitly  
2 required to be regulated under a state implementation plan described in subd. 1.

3           (b) If the department of natural resources believes that par. (a) applies to a  
4 proposed rule, the department shall include a statement to that effect in any  
5 economic impact analysis prepared under s. 227.137 for the proposed rule.

6           **SECTION 12.** 227.14 (2) (a) 3m. of the statutes is created to read:

7           227.14 (2) (a) 3m. A summary of any public comments and feedback on the  
8 statement of scope of the proposed rule that the agency received at any preliminary  
9 public hearing and comment period held under s. 227.136 and a description of how  
10 and to what extent the agency took those comments and that feedback into account  
11 in drafting the proposed rule.

12           **SECTION 13.** 227.14 (4m) of the statutes is amended to read:

13           227.14 (4m) NOTICE OF SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. On the same  
14 day that an agency submits a proposed rule to the legislative council staff under s.  
15 227.15, the agency shall prepare a written notice of the agency's submittal to the  
16 legislative council staff. The notice shall include a statement of the date on which  
17 the proposed rule has been submitted to the legislative council staff for review, of the  
18 subject matter of the proposed rule, and of whether a public hearing on the proposed  
19 rule is required under s. 227.16, and shall identify the organizational unit within the  
20 agency that is primarily responsible for the promulgation of the rule. The notice  
21 shall also include a statement containing the identifying number of the statement  
22 of scope for the proposed rule assigned under s. 227.135 (3), the date of publication  
23 and issue number of the register in which the statement of scope is published, and  
24 the date of approval of the statement of scope by the individual or body with  
25 policy-making powers over the subject matter of the proposed rule under s. 227.135

1 (2). The notice shall be approved by the individual or body with policy-making  
2 powers over the subject matter of the proposed rule. The agency shall send an  
3 electronic copy of the notice to the legislative reference bureau, in a format approved  
4 by the legislative reference bureau, for publication in the register. On the same day  
5 that the agency sends the notice to the legislative reference bureau, the agency shall  
6 send a copy of the notice to the secretary of administration.

7 **SECTION 14.** 227.15 (1) of the statutes is amended to read:

8 227.15 (1) SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. Prior to a public hearing  
9 on a proposed rule required under s. 227.16 or, if no such public hearing is required,  
10 prior to notice under s. 227.19, an agency shall submit the proposed rule to the  
11 legislative council staff for review. The proposed rule shall be in the form required  
12 under s. 227.14 (1), and shall include the material required under s. 227.14 (2), (3),  
13 and (4), the economic impact analysis required under s. 227.137 (2), and any revised  
14 economic impact analysis required under s. 227.137 (4). An agency may not hold a  
15 public hearing on a proposed rule or give notice under s. 227.19 until after it has  
16 received a written report of the legislative council staff review of the proposed rule  
17 or until after the initial review period of 20 working days under sub. (2) (intro.),  
18 whichever comes first. An agency may give notice of a public hearing prior to receipt  
19 of the legislative council staff report. This subsection does not apply to rules  
20 promulgated under s. 227.24.

21 **SECTION 15.** 227.15 (1m) (bm) of the statutes is amended to read:

22 227.15 (1m) (bm) The economic impact analysis required under s. 227.137 (2)  
23 and, any revised economic impact analysis required under s. 227.137 (4), and any  
24 independent economic impact analysis prepared under s. 227.137 (4m).

25 **SECTION 16.** 227.16 (1) of the statutes is amended to read:

1           227.16 (1) ~~Except as provided under sub. (2)~~ In addition to any preliminary  
2 public hearing and comment period held under s. 227.136, all rule making by an  
3 agency shall be preceded by notice and public hearing as provided in ss. 227.17 and  
4 227.18, except as provided in sub. (2).

5           **SECTION 17.** 227.16 (6) of the statutes is renumbered 227.136 (7) and amended  
6 to read:

7           227.136 (7) For the purpose of soliciting public comment, an agency may hold  
8 a hearing on the general subject matter of possible or anticipated rules before  
9 preparing a statement of scope for a proposed rule in draft form. A hearing held  
10 under this subsection does not ~~satisfy the requirement of sub. (1) with respect to the~~  
11 ~~promulgation of a specific proposed rule~~ relieve the agency from its obligation to  
12 comply with a directive under sub. (1) or the requirement to hold a hearing under s.  
13 227.16.

14           **SECTION 18.** 227.17 (1) (intro.) of the statutes is amended to read:

15           227.17 (1) (intro.) If a hearing is required under s. 227.16, the agency shall do  
16 all of the following:

17           **SECTION 19.** 227.17 (3) (eg) of the statutes is created to read:

18           227.17 (3) (eg) Any independent economic impact analysis prepared under s.  
19 227.137 (4m).

20           **SECTION 20.** 227.17 (3) (em) of the statutes is repealed.

21           **SECTION 21.** 227.185 of the statutes is amended to read:

22           **227.185 Approval by governor.** After a proposed rule is in final draft form,  
23 the agency shall submit the proposed rule to the governor for approval. The governor,  
24 in his or her discretion, may approve or reject the proposed rule. If the governor  
25 approves a proposed rule, the governor shall provide the agency with a written notice

1 of that approval. No proposed rule may be submitted to the legislature for review  
2 under s. 227.19 (2) unless the governor has approved the proposed rule in writing.  
3 The agency shall notify the joint committee for review of administrative rules  
4 whenever it submits a proposed rule for approval under this section.

5 **SECTION 22.** 227.19 (3) (intro.) of the statutes is amended to read:

6 227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be  
7 in writing and shall include the proposed rule in the form specified in s. 227.14 (1);  
8 the material specified in s. 227.14 (2), (3), and (4); including any statement,  
9 suggested changes, or other material submitted to the agency by the small business  
10 regulatory review board; a copy of any economic impact analysis prepared by the  
11 agency under s. 227.137 (2); a copy of any revised economic impact analysis prepared  
12 by the agency under s. 227.137 (4); a copy of any report prepared by the department  
13 of administration under s. 227.137 (6); independent economic impact analysis  
14 prepared under s. 227.137 (4m); a copy of any energy impact report received from the  
15 public service commission under s. 227.117 (2); and a copy of any recommendations  
16 of the legislative council staff. The report shall also include all of the following:

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

18 227.19 (3) (c) A list of the persons who appeared or registered for or against the  
19 proposed rule at a public hearing held under s. 227.136 or 227.16.

20 **SECTION 24.** 227.19 (4) (b) 1. (intro.) of the statutes is amended to read:

21 227.19 (4) (b) 1. (intro.) Except as otherwise provided under subds. 1m. and 5.  
22 in this paragraph, the committee review period for each committee extends for 30  
23 days after referral of the proposed rule to the committee under sub. (2). If the  
24 chairperson or the cochairpersons of a committee take either of the following actions  
25 within the 30-day period, the committee review period for that committee is

1 continued for 30 days from the date on which the first 30-day review period would  
2 have expired:

3 **SECTION 25.** 227.19 (5) (b) 1. (intro.) of the statutes is amended to read:

4 227.19 (5) (b) 1. (intro.) Except as otherwise provided in ~~subd. 1m.~~ this  
5 paragraph, the review period for the joint committee for review of administrative  
6 rules extends for 30 days after the last referral of a proposed rule and any objection  
7 to that committee, and during that review period that committee may take any action  
8 on the proposed rule in whole or in part permitted under this subsection. The joint  
9 committee for review of administrative rules shall meet and take action in executive  
10 session during that period with respect to any proposed rule or any part of a proposed  
11 rule to which a committee has objected and may meet and take action in executive  
12 session during that period with respect to any proposed rule or any part of a proposed  
13 rule to which no committee has objected, except that if the cochairpersons take either  
14 of the following actions within the 30-day period, the joint committee review period  
15 is continued for 30 days from the date on which the first 30-day review period would  
16 have expired:

17 **SECTION 26.** 227.19 (5) (b) 3. of the statutes is created to read:

18 227.19 (5) (b) 3. The joint committee for review of administrative rules, by a  
19 majority vote of a quorum of the committee, may request the preparation of an  
20 independent economic impact analysis for a proposed rule, regardless of whether an  
21 independent economic impact analysis was prepared under s. 227.137 (4m). If the  
22 joint committee for review of administrative rules requests an independent economic  
23 impact analysis under this subdivision, the committee shall <sup>(INS SA-1 3.</sup> notify the agency  
24 proposing the proposed rule and shall contract with a person that is not an agency  
25 to prepare the independent economic impact analysis, and the review period for the

1 committee is extended to the 10th working day following receipt by the committee  
2 of the completed analysis. The person preparing the independent economic impact  
3 analysis shall comply with s. 227.137 (4m) (c) 1. to 3. Costs of completing an  
4 independent economic impact analysis shall be paid as follows:

5 a. If the estimate in the independent economic impact analysis of total  
6 implementation and compliance costs under s. 227.137 (3) (b) 1. varies from the  
7 agency's estimate by 15 percent or more or varies from the agency's determination  
8 that there will be no implementation or compliance costs, the committee shall assess  
9 the agency that is proposing the proposed rule for the costs of completing the  
10 independent economic impact analysis.

11 b. If the estimate in the independent economic impact analysis of total  
12 implementation and compliance costs under s. 227.137 (3) (b) 1. does not vary from  
13 the agency's estimate by 15 percent or more or is in accord with the agency's  
14 determination that there will be no implementation and compliance costs, the costs  
15 of completing the independent economic impact analysis shall be paid in equal parts  
16 from the appropriation accounts under s. 20.765 (1) (a) and (b).

17 c. Notwithstanding subd. 3. a. and b., if the maximum potential obligation  
18 under the contract for completing the independent economic impact analysis exceeds  
19 \$50,000, the joint committee for review of administrative rules shall submit the  
20 proposed contract to the joint committee on finance for the purpose of determining  
21 the funding source for the costs of completing the independent economic impact  
22 analysis, and the costs of completing the independent economic impact analysis shall  
23 be paid as provided by the joint committee on finance. If the joint committee on  
24 finance does not act to determine the funding source within 90 days, the costs of

1 completing the independent economic impact analysis shall be paid as provided in  
2 subd. 3. a. and b.

3 **SECTION 27.** 227.19 (5) (d) of the statutes is amended to read:

4 227.19 (5) (d) *Joint committee action.* The joint committee for review of  
5 administrative rules may nonconcur in a committee's objection to a proposed rule or  
6 a part of a proposed rule, concur in a committee's approval of a proposed rule or a part  
7 of a proposed rule, otherwise approve a proposed rule or a part of a proposed rule, or  
8 waive its jurisdiction over a proposed rule or a part of a proposed rule by voting to  
9 nonconcur, concur, or approve, or to waive its jurisdiction, during the applicable  
10 review period under par. (b). ~~Except as provided in par. (dm), if~~ If the joint committee  
11 for review of administrative rules objects to a proposed rule or a part of a proposed  
12 rule and invokes this paragraph, an agency may not promulgate the proposed rule  
13 or part of the proposed rule objected to until a bill introduced under par. (e) fails to  
14 be enacted. The joint committee for review of administrative rules may object to a  
15 proposed rule or a part of a proposed rule under this paragraph only for one or more  
16 of the reasons specified under sub. (4) (d).

17 **SECTION 28.** 227.19 (5) (dm) of the statutes is amended to read:

18 227.19 (5) (dm) ~~*Rules increasing dwelling construction costs; Indefinite*~~  
19 ~~*objection; joint committee action.*~~ If the joint committee for review of administrative  
20 rules objects to a proposed rule or a part of a proposed rule ~~for a reason specified in~~  
21 ~~sub. (4) (d) 7.~~ and invokes this paragraph, the department of safety and professional  
22 services agency may not promulgate the proposed rule or part of the proposed rule  
23 objected to until a bill introduced under par. (em) is enacted. ~~This paragraph applies~~  
24 ~~notwithstanding that the purpose of the one- and 2-family dwelling code under s.~~  
25 ~~101.60 includes promoting interstate uniformity in construction standards~~ The joint

1 committee for review of administrative rules may object to a proposed rule or a part  
2 of a proposed rule under this paragraph only for one or more of the reasons specified  
3 under sub. (4) (d). This paragraph does not apply to a proposed rule whose  
4 promulgation has been previously authorized under par. (fm).

5 **SECTION 29.** 227.19 (5) (em) of the statutes is amended to read:

6 227.19 (5) (em) ~~Rules increasing dwelling construction costs; Indefinite~~  
7 ~~objection; bill to authorize promulgation.~~ If the joint committee for review of  
8 administrative rules objects to a proposed rule or a part of a proposed rule under par.  
9 (dm), any member of the legislature may introduce a bill to authorize promulgation  
10 of the proposed rule or part of the proposed rule. ~~This paragraph applies~~  
11 ~~notwithstanding that the purpose of the one- and 2-family dwelling code under s.~~  
12 ~~101.60 includes promoting interstate uniformity in construction standards.~~ This  
13 paragraph does not apply to a proposed rule whose promulgation has been previously  
14 authorized under par. (fm).

15 **SECTION 30.** 227.19 (5) (f) (title) of the statutes is amended to read:

16 227.19 (5) (f) (title) ~~Timely introduction of bills~~ Bills to prevent promulgation;  
17 effect.

18 **SECTION 31.** 227.19 (5) (fm) of the statutes is amended to read:

19 227.19 (5) (fm) ~~Rules increasing dwelling construction costs; timely~~  
20 ~~introduction of bill~~ Indefinite objection; bills to authorize promulgation; effect. If all  
21 bills introduced under par. (em) are defeated, or fail to be enacted in any other  
22 manner, the agency may not promulgate the proposed rule or part of the proposed  
23 rule that was objected to unless subsequent law specifically authorizes its  
24 promulgation. If any of those bills becomes law, the agency may promulgate the  
25 proposed rule or part of the proposed rule that was objected to.



1           **SECTION 32.** 227.19 (6) (b) of the statutes is amended to read:

2           227.19 (6) (b) Upon introduction of the bills under sub. (5) (e) or (g), the  
3           presiding officer of each house of the legislature shall refer the bill introduced in that  
4           house to the appropriate committee, to the calendar scheduling committee or directly  
5           to the calendar. If the committee to which a bill is referred makes no report within  
6           30 days after referral, the bill shall be considered reported without recommendation.  
7           No later than 40 days after referral, or as soon thereafter as is possible if the  
8           legislature is not in a floorperiod 40 days after referral, the bills shall be placed on  
9           the calendar of each house of the legislature according to its rule governing the  
10          placement of proposals on the calendar. A bill introduced under this section ~~which~~  
11          that is received in the 2nd house shall be referred, reported and placed on the  
12          calendar in the same manner as an original bill introduced under this section.

13          **SECTION 33.** 227.24 (1) (a) of the statutes is amended to read:

14          227.24 (1) (a) An agency may, except as provided in s. 227. 136 (1), promulgate  
15          a rule as an emergency rule without complying with the notice, hearing, and  
16          publication requirements under this chapter if preservation of the public peace,  
17          health, safety, or welfare necessitates putting the rule into effect prior to the time it  
18          would take effect if the agency complied with the procedures.

19          **SECTION 34.** 227.24 (1) (e) 1d. of the statutes is amended to read:

20          227.24 (1) (e) 1d. Prepare a statement of the scope of the proposed emergency  
21          rule as provided in s. 227.135 (1), obtain approval of the statement as provided in s.  
22          227.135 (2), and send the statement to the legislative reference bureau for  
23          publication in the register as provided in s. 227.135 (3), and hold a preliminary public  
24          hearing and comment period if directed under s. 227.136 (1). If the agency changes  
25          the scope of a proposed emergency rule as described in s. 227.135 (4), the agency shall

1 prepare and obtain approval of a revised statement of the scope of the proposed  
2 emergency rule as provided in s. 227.135 (4). No state employee or official may  
3 perform any activity in connection with the drafting of a proposed emergency rule  
4 except for an activity necessary to prepare the statement of the scope of the proposed  
5 emergency rule until the governor and the individual or body with policy-making  
6 powers over the subject matter of the proposed emergency rule approve the  
7 statement.

8 **SECTION 35.** 227.24 (4) of the statutes is amended to read:

9 227.24 (4) PUBLIC HEARING. Notwithstanding sub. (1) (a) and (b) and in addition  
10 to any preliminary public hearing and comment period held under sub. (1) (e) 1d., an  
11 agency shall hold a public hearing within 45 days after it promulgates a rule under  
12 sub. (1). If within that 45-day period the agency submits to the legislative council  
13 staff under s. 227.15 a proposed rule corresponding to the rule under sub. (1), it shall  
14 hold a public hearing on both rules within 90 days after promulgation of the rule  
15 under sub. (1), or within 30 days after the agency receives the report on the proposed  
16 rule prepared by the legislative council under s. 227.15 (2), whichever occurs later.

17 **SECTION 36. Initial applicability.**

18 (1) This act first applies to a proposed rule or emergency rule whose statement  
19 of scope is presented for approval under section 227.135 (2) of the statutes on the  
20 effective date of this subsection.

21 **SECTION 37. Effective date.**

22 (1) This act takes effect on the first day of the first month beginning after  
23 publication.

24 (END)



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRBa0462/1  
MED:wlj

**SENATE AMENDMENT 1,  
TO SENATE SUBSTITUTE AMENDMENT 1,  
TO SENATE BILL 15**

May 1, 2017 - Offered by Senator LEMAHIEU.

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 10, line 16: after that line insert:

INS SA-1  
1.

3 “(am) 1. A request by the senate cochairperson of the joint committee for review  
4 of administrative rules for an independent economic impact analysis under par. (a)  
5 requires approval by the committee on senate organization.

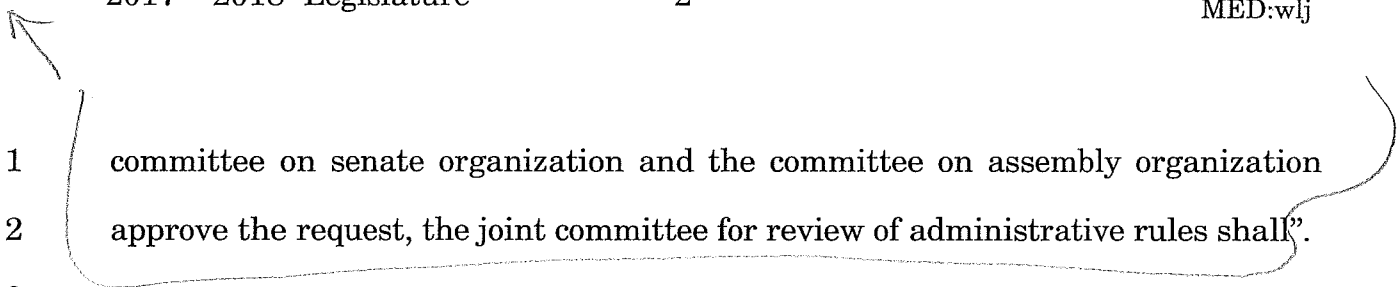
6 2. A request by the assembly cochairperson of the joint committee for review  
7 of administrative rules for an independent economic impact analysis under par. (a)  
8 requires approval by the committee on assembly organization.”

9 **2.** Page 10, line 18: after “par. (a),” insert “and the request is approved under  
10 par. (am),”.

11 **3.** Page 18, line 23: after “shall” insert “request approval by the committee on  
12 senate organization and the committee on assembly organization. If both the

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3.





1 committee on senate organization and the committee on assembly organization  
2 approve the request, the joint committee for review of administrative rules shall".

3 (END)