

Fiscal Estimate Narratives

DPI 6/15/2017

LRB Number	17-3586/2	Introduction Number	AB-0384	Estimate Type	Original
Description the expiration of administrative rules					

Assumptions Used in Arriving at Fiscal Estimate

For the purpose of this analysis, the Department of Public Instruction will focus on the provisions that directly impact the Department with respect to rulemaking.

This bill provides for the expiration of each chapter of the Wisconsin Administrative Code after seven years, unless the chapter is readopted by the agency through the readoption process established under the bill.

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 Once promulgated, administrative rules remain in effect indefinitely unless repealed or amended by the agency or suspended by the Joint Committee for Review of Administrative Rules (JCRAR).

This bill provides that each chapter of the code expires seven years after a rule that creates, or repeals and recreates, the chapter takes effect or after the chapter is readopted. The bill requires JCRAR to establish a schedule for the expiration of all existing code chapters that are in effect on the effective date of the bill. Under the bill, in the year before a code chapter is set to expire, an agency may send a readoption notice to JCRAR and the appropriate standing committees proposing to readopt the chapter. If no member of JCRAR or the standing committees objects to the readoption notice, the chapter is considered readopted without further action. If any member of JCRAR or either standing committee objects to readoption of the chapter, the chapter expires on its expiration date unless the agency promulgates a rule to readopt the chapter using the standard rule-making process. Under the bill, 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. The bill also requires agencies to avoid the use in rules of words and phrases that are outdated or that are now understood to be derogatory or offensive.

State:

Currently, the Department designates an administrative rules coordinator, and employs an Office of Legal Services for the purpose of working with program staff to promulgate administrative rules (among other duties performed by the Office of Legal Services for the Department). Rules are drafted in accordance with changes in statutes and/or practice. It takes a significant amount of staff hours to promulgate a rule, depending on the type of rule and subject matter, in accordance with a process that currently takes about nine months to a year to complete. Rules are often revisited as the underlying statutes affecting the rule's subject matter change on a regular basis.

Under the bill, each chapter of the Department's administrative code is set to expire after seven years, unless the chapter is readopted by the agency through the readoption process established under the bill. The ultimate effect of this bill is that it will require the Department to increase its workload in order to either: 1) prepare the appropriate documentation requesting readoption of rules that it has already promulgated, or 2) pursue the standard rule-making process to readopt any rule chapter that is objected to by any member of JCRAR or either standing committee. Under the bill, JCRAR is required to establish a schedule for the expiration of all existing code chapters that are in effect on the effective date of the bill. It is uncertain what such schedule may look like for administrative rules governed by the Department, but because 44 rule chapters are currently in effect in the DPI administrative code, it can be assumed that the bill will require constant, additional rulemaking by the Department for every rule chapter in seven-year intervals. This does not include any time the Department pursues rule-making to update its chapters in accordance with regular changes to underlying statutes. 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; however, in the event rules are not readopted by JCRAR, by either standing committee, or by the Department, agency practice and legislative intent with regard to implementation of

the statutes may be inconsistent.

It is unlikely such a provisions would result in a net savings in terms of resources and staff time necessary to conduct rulemaking. Rather, compliance with the provisions in the bill are likely to cause additional work to be performed. Because each rule varies in size and scope, it is not possible to determine the additional number of work hours that would be spent on compliance with provisions on the bill; thus, the fiscal impact to the state (and directly on the Department) as a result of this bill is indeterminate.

Local:

The local fiscal impact as a result of this bill is indeterminate.

Long-Range Fiscal Implications